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IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

APPEAL FROM RICHLAND COUNTY
Honorable Judges, Justices

THE STATE, *Appellant*

against

JAMES EDWARDS, JR., ALVISTER FAYE, JR., LOCKNEY DOUGLAS, WILLIAM BROWN, JR., HUGOL DELGADO, NIMMONS WILLIE, DOYKIN JONES, WILLIAM PERKINS and BILL ALVIN SULLIVAN, *Appellants*

THE STATE, *Respondent*

against

GEORGE C. FOSTER, JAMES JEROME KIRTON, ISAAC J. CAMPBELL, ISAAC WASHINGTON, RONALD J. RHAMES, JOSEPH E. BAILEY, DAVID GREEN and CHARLES F. BARR, *Appellants*

THE STATE, *Respondent*

against

JAMES C. WEST, SINCLAIR SALTERS, BEZAKAH JOHNSON, JAMES CLAYTON, WILLIAM E. MOULTRIE, DAVID CARTER, BENJAMIN T. GLOVER, SAMUEL S. WILLIAMS, ARTHUR W. STANLEY, JR., WINDELL BAILEY, FENNIE W. GLOVER, DAVID L. PERRETT, JAMES A. CARTER, CLIFFORD L. RICE, DELBERT L. WOODS, ALFRED O. TEMON, WILBUR C. WALKER, SAUL L. EDWARDS, JAMES W. CANTY, ISAAC W. WILLIAMS, CLIFFORD E. BULL, WILLIAM H. COOLEY, ROBERT D. LAFRANCE, FRANK E. GORE, EARL PETERS, JR., HENRY H. HARRIS, CHARLES K. MILLER, CHARLES MCDOW, MAXINE EPPS, HENRY WILLIAMS, LEROY HOGANS, JIMMIE L. SMITH, JAMES REEDER, JR., GEORGE A. ANDERSON, and ANTHONY McLADDEN, *Appellants*

THE STATE, *Respondent*

against

CARRIE MAE KELLY, QUEEN F. RUSH, HAZEL A. NEWBERRY, BETTY J. LINDSEY, SARAH E. MCKENZIE, MATTIE THOMAS, BETTY J. CAPERS, MINNIE DOWITT, FLOYD ALVIN GILMORE, MCARTHUR J. BISHOP, CHARLES FLEMING, JOE LEWIS ROBINSON, JOHN J. CAMPBELL, J. D. NEWMAN, HAROLD FOSTER, JIMMIE NORSE MOORE, HORACE NASH, JOHN WESTLEY MILLER, MARK A. WILLIAMS, CLARENCE MRS. SOURL, CARL EDWARD BOON, GLASSIE R. WALKER, BOBBIE JEAN YOUNG, WILLIE PAUL WORTHY, ROBERT FERGUSON, ALBERT ORAGE, JOHN SAWYER, GLENN MANNING, KENNEDY CLAFELIN, JOHN, FED. ERIC, BOBBY DOCTOR, ALBERTINE M. COONEY, YVONNE J. COLEMAN, BRENDA J. BURTON, BARBARA ANN MACK, JUDITH D. SMITH, EMMA J. JONES, EVELYN I. ROBINSON, WILLIAM THEODORE BOGGS, HENRY EARL THOMAS, JAMES EDWARD COLEMAN, BERNARD NATHANIEL RIGGINS, JESSIE ALFREDIA LOCKHART, BARBARA ANN CURRINGTON, SARAH ANN WHARTON, DIANE GWENDOLYN ELASSINGAME, SOPHIA PEARL LESTER, BETTY JEAN WIDEMAN, WILLIAM T. ROBINSON, ROBERT HICKMAN, HERBERT LAWRENCE WILSON, BERNARD DAIRE, LEONARD BRANT, DONALD JEROME SALTERS, FREDERICK P. PAGE, ROBERT LEE M. BETH, LEWIE LIGHTY, BOOKER T. McLEOD, CLAUDE E. MOORE, JOHN J. WITHERSPOON, MATTHEW WILLIAMS, HAROLD BARDONVILLE, TRAVIS SIMMONS, SHIPLEY, STROMAN, FLORENCE SMALLS, RAY L. JONES, JEANNIE LUE DAVIS, MYRTLE L. WALKER, HILLIS B. MOSES, BETTY JEAN WILSON, LENNARD L. MCANTS, MARIO DAVIS, SAMMIE PRINGLE, CLINTON W. HAZZARD, ROBERT M. LEE, JAMES A. ALFORD, GWENDOLYN WALSON, FRANCIS M. DANIELS, JOHN LAND, YVONNE REED, DORIS D. WRIGHT, DEE ANN ANDERSON, MARY NORRIS, RHUNETT LINDSEY, JUANITA HALL, GERERUDE EVANS, SUZIE A. GREEN, ANNIE MAE RAY, LEOLA CLEMENTS, GETTIE DE SMITH, CATHERINE DEAN, JAMES L. REED, JAMES K. DAVIS, ALICIA BROWN, REBECCA WILLIAMS, DOROTHY H. ROBINSON, MARY L. ENG, LISH, WILLIE O. JAMISON, JUSTINE SIMMONS, LOVENE BRIGGS, JEAN NETTE BLACK, JUANITA WADDELL, LEE J. SULLIVAN, PATRICIA GREEN, AMANDA TOWNSEND, MARGARET M. GRAY, BETTIE MARSHALL, AN NETTE EDWARDS, MATTIE GILES, NOVEL NOWLIN, BARBARA FAULK, LUCY DAVIS, EDITH JENKINS, BETTIE J. KING, RINZER INAPINET, KATIE DONALDSON, MERION J. JOHNSON, JEANETTE L. HARTWELL, MARY E. ELLISON, REGINA S. A. CALDWELL, LAVERNE DEPRANT, CLAUDE M. DRAYTON, OTTIE R. HARRAIT, BOBBIE J. GILES, IRINE O'N. GILES, FELICIA Y. YOUNG, FORTIA H. SIZER, KATE LEWIS WILLIE E. GRANT, FRANCES F. JOHNSON, EVELYN BING, SHIRLEY A. KING, LORETTA G. RUSH, BETTIE J. BROWN, GLORIA J. JEFFERSON, and ROSALIE HINES, *Appellants*

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER-TERM, 1962

No. 86

JAMES EDWARDS, JR., ET AL., PETITIONERS,

vs.

SOUTH CAROLINA.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF SOUTH CAROLINA**

**PETITION FOR CERTIORARI FILED MARCH 27, 1962
CERTIORARI GRANTED MAY 14, 1962**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 86

JAMES EDWARDS, JR., ET AL., PETITIONERS,

vs.

SOUTH CAROLINA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF SOUTH CAROLINA

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[fol. 1]

STATEMENT

This is an appeal from an Order of Honorable Legare Bates, dated July 10, 1961, affirming convictions of the Appellants in Magistrate's Court.

The Appellants, numbering one hundred eighty-seven persons, were charged with the crime of breach of the peace. The charges arose out of certain activities in which the Appellants were engaged in and about the State House Grounds in the City of Columbia on March 3, 1961.

The right to trial by jury was waived, and the Appellants were tried by the Columbia City Magistrate of Richland County in four separate trials on the 7th, 13th, 16th and 27th days of March, 1961. It was stipulated that all testimony presented in the first two trials would be substantially the same in subsequent trials, and such testimony was ordered incorporated in the records of the subsequent trials as if repeated therein. The same stipulation and order were made as to testimony presented in the third trial.

All Appellants were found guilty, and sentences ranging from fines of Ten (\$10.00) Dollars or service of five (5) days to One Hundred (\$100.00) Dollars or thirty (30) days were imposed. Thereafter, by stipulation, the appeals from the four trials were consolidated and argued as one case before the Richland County Court. In the Order from which appeal is taken, the judgment of the Magistrate's Court was affirmed. Due and timely notice of appeal from this Order was given.

[fol. 2]

IN THE COLUMBIA CITY MAGISTRATE'S COURT OF RICHLAND COUNTY

Transcript of Testimony

Before Honorable Frank Powell, Magistrate, on Tuesday, March 7, 1961, Richland County Court House, Columbia, South Carolina.

APPEARANCES:

For the State: J. C. Coleman, Esq., E. N. Brandon, Esq.

For the Defendants: Matthew J. Perry, Esq., Lincoln C. Jenkins, Jr., Esq., Donald James Sampson, Esq.

Eleanor S. Mackey, Reporter.

(Court convened at 10:00 o'clock, a.m. in Circuit Court Room, Richland County Court House.)

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Powell: I would like to announce the rules for this hearing. No. 1, no photographs will be taken in the court room. No. 2, as many people who like may come here as long as they have a seat. There will be no standing up around the walls. There will be no outbursts in any fashion; if there is any, you will be cited for contempt of court.

The Court has before it a warrant charging the following person for breach of peace here in Richland County. A complaint, under oath, has been made by L. J. Campbell that at Columbia, in Richland County, South Carolina, on March the 2nd, 1961, James Edwards, Jr., Alvester Pate, Jr., Pinckney Moseley, Melvin Brown, Jr., Harold Eugene Nimmons, Willie Boykin Jones, William Perkins and Bill Alvin Sullivan did commit a breach of the peace and that the said persons, together with others, did assemble to impede normal traffic and they failed to disperse upon [fol. 3] orders of the police officers. Whereas, the aforementioned individuals on March 2nd, 1961, on the State

Capitol grounds, on adjacent sidewalks and streets did commit a breach of the peace in that they, together with a large group of people, did assemble and impede the normal traffic, singing and parading with placards, failed to disperse upon lawful orders of police officers, all of which tended directly to immediate violence and breach of the peace in view of existing conditions. Signed: J. J. Campbell. Sworn to, before me on the 2nd day March, 1961. Frank Powell, Columbia Magistrate. Are all of the persons named present?

Mr. Perry: Your Honor, they are present.

The Court: Are these persons represented by an attorney?

Mr. Perry: Yes, sir. They are represented by three attorneys: Mr. Lincoln C. Jenkins, Jr., Mr. Donald James Sampson and myself, Matthew J. Perry. May it please the Court, if I may interrupt Your Honor's proceedings momentarily, the defendants have not been given copies of the warrant and I wonder if it is possible, at this time that they might be given copies of the warrant?

The Court: Not at this time. The warrant has been read individually to them when they were charged. Will the defendants please stand and approach the front of the court room as I call their names?

Mr. Perry: Just one moment, please. I don't want to be put in the position of interrupting the procedure. May we approach the Bench with members of counsel for the State?

The Court: Yes.

(Whereupon, Mr. Coleman, Mr. Brandon, Mr. Perry, Mr. Jenkins and Mr. Sampson approached the Bench.)

[fol. 4] Mr. Perry requested warrant to examine it before defendants were arraigned.

(Defendants arraigned before the Court.)

The Court: Are these the ones named in the warrant charged with breach of the peace, Columbia, South Carolina, on March 2nd, 1961?

Defendants: (In unison) Yes, sir.

The Court: Were you released on bonds for appearance in this court?

Defendants: (In unison) Yes.

The Court: How do you plead to the charge, guilty or not guilty?

Mr. Jenkins: As counsel for the defendants, may I speak?
At this time, Your Honor, the defendants each enter a plea of not guilty.

The Court: You will all take seats, please. Are the defendants ready for trial?

Mr. Perry: The defendants are ready.

The Court: Is the State ready?

Mr. Coleman: The State is ready.

Whereupon, Mr. Coleman called IRVING G. McNAYR who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Coleman:

Q. Mr. McNayr, I believe you are the City Manager of the City of Columbia?

A. I am, sir.

Q. As such, do your duties require you to supervise the activities of the Columbia City Police Department?

A. Yes, sir. I have direct supervision of the City Police Department.

[fol. 5] Q. Do you have any personal knowledge of the incident alleged in the warrant just read by the Judge, which allegedly occurred in the City of Columbia, in and around the State House grounds, on March the 2nd last involving the defendants on trial here today?

A. Yes, sir. I was present all during the proceedings.

Q. Would you please relate to the Court in your own words exactly what occurred with regard to any matter about which you have personal knowledge, so far as this charge is concerned?

A. Yes. At approximately 10:30 on the morning of March the 2nd I was called by Chief of Police Campbell and informed that he had word that a meeting was to be held at the Zion Baptist Church on lower Washington Street, and

that it was understood that students attending that meeting would then proceed to the State House grounds to demonstrate.

Mr. Perry: We object to that testimony and moved that it be stricken on the grounds of hearsay, under the rule of hearsay.

Mr. Coleman: The City Manager has not testified to the facts; he is merely relating the official information received from his Chief of Police, which motivated his appearance. He has not said that the march had actually started or there would actually be one. He merely stated that it was his information from his Chief of Police that there might possibly be a march, merely setting out his motivation for his actions.

The Court: We will sustain the objection. In any opinion, it would be hearsay which Chief Campbell said to Mr. McNayr.

Q. Mr. McNayr, what did you actually do, without relating what Chief Campbell or any one might have told you? [fol. 6] A. I asked Chief Campbell to pick me up in the immediate future in his car and drive me to the Zion Baptist Church. He did that and we arrived at the church at approximately a quarter of eleven. Numerous youths were entering the basement area of the church at the time. On the outside was David Carter, whom I had known in the street demonstrations here over the past months and the past year. I talked with David Carter and asked for information as to what was going on. I received a completely evasive answer. He informed me that they were simply holding a meeting. I asked him—

Mr. Perry: May it please the Court, I object to this line of testimony on the grounds that David Carter is not among the defendants who are on trial here this morning. The conversation with a person not on trial at this proceeding is likewise violation of the rule against hearsay. If the conversation had been with one of these defendants, I think perhaps it would be an exception to the hearsay rule, but we respectfully urge that this particular testimony is in violation of the hearsay rule. We also move

that the testimony relating to the full conversation with David Carter be stricken.

Mr. Coleman: If Your Honor please, there has been no testimony as to what David Carter said. He is merely relating his activities on that day, which had generally to do with the demonstration which later occurred on the State House Grounds, out of which a charge against the defendants arose. We have no desire for him to relate his conversation with David Carter.

Mr. Perry: In reply, may I say, Sir, that David Carter, not being on trial, I believe Mr. McNayr has stated that [fol. 7] Carter was evasive and Carter, not being on trial, is not in position of defending himself against this statement.

Mr. Coleman: We will agree to strike the reference to David Carter and the answer being in the evidence.

The Court: Objection sustained on the ground that defense has brought out, David Carter is not on trial here today. Objection is sustained. Strike that.

A. Mr. Coleman, I'm going to find it extremely difficult to give you the chain of events if I'm not allowed to state the actual chain of events.

Q. Mr. McNayr, where did you go after you left Zion Baptist Church?

A. When the group of students, apparent students, came out of the church, Chief Campbell drove me to the entrance of the State House Grounds. By that time, the students had started marching in groups of anywhere from fifteen to twenty-five, just prior to our leaving the church area. We, then, stayed on the State House grounds and conferred with Mr. Harry Walker of the Governor's Office, awaiting the students and they soon appeared walking up Gervais Street. When they appeared at the grounds, still coming in groups, they were instructed to remain in those groups as they stayed on the sidewalk, and Mr. Walker then talked with each group and the apparent leader of each group and instructed them, in my hearing. He first questioned them as to what—

Mr. Perry: May it please the Court, again we object to conversation with Mr. Harry Walker with the defendants

on the ground that it violates the hearsay rule. Mr. Walker may perhaps testify in this proceeding himself. I respectfully submit anything Mr. McNayr might have said himself to these persons, by way of giving an official demand, [fol. 8] he can say but, very respectfully, any other order that was conveyed to the defendants by any other officer or any other person in authority would be violation of the hearsay rule.

The Court: Objection sustained. Strike it from the record. Go ahead.

Q. Mr. McNayr, did you, yourself, have any conversation with these marchers, these defendants, at the time?

A. Not when they first appeared, no, sir.

Q. What was the general situation when you first got there, so far as the crowd around the State House?

Mr. Perry: Objection to the use of the word "crowd".

Q. Was there a crowd around the State House?

A. There was not what I would call a crowd when we first arrived at the scene.

Q. Who was there?

A. Primarily, officers of the South Carolina Law Enforcement Division, a few State Highway Patrol officers, a number of policemen, Mr. Walker, whom I mentioned briefly just now.

Q. Did anything thereafter occur which made it incumbent upon you, in your opinion, in your official capacity, to take any action?

Mr. Perry: I didn't hear the question.

Q. Did anything occur thereafter, after your arrival at the State House grounds, at the horseshoe?

A. Yes.

Q. Anything occur thereafter which made it incumbent upon you, in your opinion, in your official capacity as City Manager, to take any official action?

A. Yes, it did.

Q. What was it that occurred?

A. The groups were allowed to go in small groups

[fol. 9] Q. What groups?

A. The groups of young Negro students, within groups to travel through the State House grounds. I did not grant them authority to do that. This will probably be objected to but Mr. Harry Walker granted that authority.

Mr. Perry: We do so object.

Q. What was the approximate size of the crowd of young Negro students?

A. I estimated it, at the time, at around 200.

Q. At what time, Mr. McNayr, was it that these students first made their appearance in and about the State House grounds?

A. They first made their appearance somewhere between a quarter of twelve and twelve o'clock.

Q. Did you have any conversation with them at that time or any one who made himself known to you as their leader?

A. Yes, I did, on various occasions during the period they were there.

Q. Did you give any official instructions to these young Negro students at this time?

A. Yes, I did. I asked them to remain in small groups. I asked them not to block the sidewalk or walkways or street in any way. I told them they must remain in such groups.

Q. What time was this approximately? Do you remember?

A. This was approximately between the period of their arrival and right around 12 o'clock; within the first fifteen minutes of their arrival.

Q. Did I understand you to say that they were not interfered with at that time?

A. They were not interfered with.

[fol. 10] Q. Did they proceed to walk, march, move about in any way in and around the State House grounds?

A. Yes, they did. They proceeded to walk around the State House grounds still in the groups.

Q. How long did this procedure continue?

A. This procedure continued for between a half and three-quarters of an hour.

Q. Did anything thereafter occur which caused you to take further official action?

A. Yes. Following their proceeding through the State House grounds, they then started to gather on the sidewalk.

Q. "They"—who are you referring to?

A. I'm referring to approximately 200 students with the stated intention of again going through the grounds and demonstrating. They gathered on the sidewalks and also began to accumulate in front of the drive, the horse shoe as you have described it.

Q. That's where the monument stands right directly in front of the State House steps?

A. Yes. By this time, a large group of bystanders had gathered, not only on the State House side or in the horse shoe side but on the opposite side of Gervais Street, blocking the walkways where Main enters Gervais on both sides of Main. It was also a tendency to block the walkways leading from the Capitol going towards Main Street.

Q. Did you have occasion to observe these onlookers? From where were they coming? Did you see that?

A. They were coming, as nearly as I could determine, they were coming down Main and collecting on the other side, near the Wade Hampton Hotel, on my left facing Main, also down Main, I can't remember the name of the building. In addition to that, many State employees—this [fol. 11] was just approximately the lunch hour, I assume, for State employees—were coming from the State Capitol building and from the various office buildings back of the Capitol, moving through the horseshoe area on to Main Street.

Q. Did it appear to you that the crowd was being attracted by the students?

Mr. Perry: I object to that, Your Honor. I object to the question on the grounds that it calls for a conclusion on the part of this witness.

The Court: I didn't understand the question.

Mr. Coleman: I asked did it appear to Mr. McNayr that the activity of the students was attracting bystanders, the onlookers.

The Court: Objection overruled.

A. There is no question about the fact that they were attracting bystanders. Many, I'm sure, were on their way to lunch and I'm sure the activities taking place caused them to stop and watch what was going on.

Q. Mr. McNayr, with reference to this horseshoe or place right in front of the State House, are there sidewalks on both sides leading up to the State House and State House grounds and is there also a roadway for vehicular traffic?

A. There is. There is a roadway used primarily for the parking of State Capitol workers and officials.

Q. Now, at the time when you first noticed a crowd of people

Mr. Perry: Again we object to the use of the word "crowd". I move that it be stricken. May I state to the Court at this time, the use of the word "crowd" seems to imply certain unlawfulness to the manner of the assembly and, therefore, since Your Honor is going to be called upon to determine the lawfulness or unlawfulness [fol. 12] of the various assemblages which occurred on this date, the use of the word "crowd" in counsel promulgating the questions tends to set the stage for the particular flavor, I think, upon which the State is relying upon. Now, I request that the Court require counsel and the witness to simply say what they saw. They saw a group of people standing, they can say that without the use of the word "crowd". That, at this particular time, carries with it an unpleasant connotation, which we are attempting to get around.

Mr. Coleman: If Your Honor please, "crowd" is a perfectly good English word, to my knowledge, and in the definition of it, I cannot see any connotation of unlawfulness whatsoever. I'll admit my intonation may be susceptible to some interpretation but not with regard to that word. I do not mind substituting another; I think their objection is entirely unbased.

The Court: Objection overruled.

Q. Can you estimate the number of the persons who did gather in and around this horseshoe by the time that

it became apparent to you ~~that~~ some further official action on your part would be necessary?

A. I would estimate the number of persons, in addition to the student groups, to be in the neighborhood of 250 to 300 people.

Q. Now, with relation, Mr. McNayr, to the sidewalks around the horseshoe and the lane for vehicular traffic, how was the crowd distributed, with regard to those sidewalks and roadways?

A. Well, the conditions varied from time to time, but at numerous times they were blocked almost completely with probably as many as thirty or forty persons, both on the sidewalks and in the street area.

fol. 13] Q. Would you say or state whether or not, in your opinion, this crowd did impede both vehicular and pedestrian traffic along the horseshoe?

A. To the best of my knowledge, I can't recall a vehicle trying to get in or out of the horseshoe. If one had attempted to, it would have impeded the entrance and exit to the horseshoe.

Q. Did you observe the pedestrian traffic on the walkway?

A. Yes, I did.

Q. What was the condition there?

A. The condition there was that it was extremely difficult for a pedestrian wanting to get through, to get through. Many of them took to the street area, even to get through the street area or the sidewalk.

Q. Mr. McNayr, from the time that you first appeared on the scene at the horseshoe at the State House and observed the young students and their activities, from this time up until the time that you took further official action, can you give us approximately the length of time involved?

A. It was approximately three-quarters of an hour.

Q. In other words, they were permitted to march in and around and about the State House grounds for approximately three-quarters of an hour without interference?

A. That's correct.

Q. All right. After this three-quarters of an hour, did you take further official action in regard to the young students or the crowd or anything else?

A. Yes, I did. As I saw the crowds gathering, the sidewalks being blocked and recognizing that the lunch hour was just starting, I was also aware of the adjacency of the University of South Carolina and the possibility of [fol. 14] larger groups of students coming forth from there and the accumulation of the student groups along the sidewalk area, I called for Dave Carter and told him that I felt the situation was becoming dangerous and told him that the group would have to be dispersed, that they should be dispersed and sent away in small groups, as they had arrived, and told him—

Mr. Perry: May it please the Court, we now object to this line of testimony on the ground that the same is purely conjectural and speculative. Mr. McNayr has stated that he realized the possibility of students from the University of South Carolina coming and he thought of other possibilities and he thought of this and that and, therefore, after sifting these various possibilities through his mind, he decided to take a course of action. I respectfully submit that this testimony is purely speculative. There is no evidence that any student from the University of South Carolina came out and attempted to involve themselves with the Negro students. There is no evidence, as I understand Mr. McNayr's testimony, of anybody else attempting to do them violence and so Mr. McNayr testifies about the various possibilities in a purely conjectural manner and we are not able actually to pin down the various possibilities which he testifies about. I respectfully urge that this testimony is objectionable and I submit that the Court should strike it from the record.

Mr. Coleman: If Your Honor please, Mr. McNayr was present on the scene as an official of the City of Columbia. In his official capacity, he supervises and has charge of the City Police Department. Incidents occurred in this horseshoe which made it his duty to take some action and I'm merely asking him to relate and he had so far related [fol. 15] what official action he had taken and why he took it, why he took that action. I see nothing speculative and I see no conjecture whatsoever in it.

Mr. Perry: I think, Your Honor, there's no question about Mr. McNayr testifying as to what he did but when

he says the reason he did it was the possibility that someone else was going to come from somewhere else and so forth, he enters the realm of conjecture and we respectfully submit that that is objectionable.

Q. Mr. McNayr, what action did you take?

A. I instructed Dave Carter to tell each of these groups, to call them up and tell each of the groups and the group leaders that they must disperse, they must disperse in the manner which I have already described, that I would give them fifteen minutes from the time of my conversation with him to have them dispersed and, if they were not dispersed, I would direct my Chief of Police to place them under arrest.

Q. What then occurred?

A. Following my instructions, Dave Carter did call up each group.

Q. This was within your hearing?

A. This was within my hearing. I was standing adjacent to him and did follow him from place to place as he moved about. Rather than give instructions in the calm way in which I had given them to him, he harangued each group with a religious, chanting type of voice—

Mr. Perry: Your Honor, we object to anything on behalf of David Carter. David Carter is not a defendant in this case. We respectfully submit that testimony with reference to any conversation of David Carter violates the hearsay rule.

[fol. 16] The Court: Objection sustained.

Q. Did you give any instructions to the students who were participating in this activity as to dispersal of the marching groups?

A. None other than to their recognized leader, David Carter.

Q. With regard to the student groups, which as you have testified had marched in and attempted some demonstration on the State House grounds, did you hear any unusual noise or anything which made it appear to you that further official action should be taken?

A. Yes. We had this chanting, religious type approach to arousing the group of students.

Q. On the part of you or any police officer, acting under your direction, was there a general purpose to disperse the entire crowd, which had gathered, or not?

A. Yes.

Q. Then, your purpose, stated briefly, in issuing this order—

Mr. Perry: Your Honor, I respectfully submit that the City Manager has demonstrated himself as a very able witness and can make his own testimony.

The Court: Objection sustained.

Mr. Coleman: If Your Honor please, surely the witness, no matter how capable he is, can respond to a question. I don't exactly understand that objection.

Mr. Perry: My objection was that the question was leading. I'm awfully sorry.

Q. Officially, your official action, Mr. McNayr, with reference to that, what was your reason for dispersing this crowd?

A. My official reason for dispersing the crowd was to avoid possible conflict, riot and dangers to the general [fol. 17] public, and, of course, included in the general public, was danger to these various students themselves.

Mr. Perry: Your Honor, may it please the Court, we object to the answer of the witness on the ground that the same is conjectural and speculative. It is too indefinite to give these defendants anything to meet in the form of real evidence. I think to that extent the witness can say what he did. Certainly the rules of evidence will permit him to do so. It is for this Court, we respectfully pray, to say whether or not what he did was proper. Now, as to what motivated the witness, we submit that the answer that the witness has just given is conjectural and speculative and we move that it be stricken.

Mr. Coleman: If Your Honor please, the City Manager took official action as the man in charge of using the City Police Department at that time. Certainly he has the right to say why he took that action. It is as simple as that. He has not speculated on any fact. He hasn't said anything was going to happen. He said it appeared to him that in those circumstances that something could happen. He is

really a police official. He is charged with the duty of observing all of these circumstances and if it should appear to him that there arises a danger to public peace, it is his duty to take action and I can see absolutely no objection to this witness stating why, in his official capacity, as a man in charge of the City Police Department, he took the drastic action of arrest.

Mr. Perry: Now, Your Honor, if he says that testimony about a riot is not conjectural, my answer to that is there is no testimony here that any riot took place, so that's conjectural, purely speculative, if anybody talks about a [fol. 18] riot at this time. There is no evidence at all in this case concerning an inclination on the part of anybody to commit a riot or to do violence toward anybody. I respectfully submit that this witness can testify as to what he did. His reasons are his own and should not become a part of the record in this case. There is further some question about this witness' official capacity to act upon the State House grounds.

The Court: Objection overruled.

Q. Mr. McNayr, did you hear or observe anything on the part of these students, that were there in your presence, which indicated to you that there might be a possible danger to the community?

Mr. Perry: That question is leading.

Mr. Coleman: I haven't said anything about any riot.

Mr. Perry: The question is leading. We object to it.

Mr. Coleman: He can state whether or not he saw or heard anything which indicated that official action was necessary.

The Court: Objection overruled.

A. Yes, I did.

Q. You have already testified, Mr. McNayr, I believe, that you did order these students dispersed within fifteen minutes?

A. Yes.

Q. Did they disperse in accordance with your order?

A. They did not.

Q. What then occurred?

A. I then asked Chief of Police Campbell to direct his men to line up the students and march them or place them under arrest and march them to the City Jail and the County Jail.

[fol. 19]

Q. They were placed under arrest?

A. They were placed under-arrest.

Cross examination.

By Mr. Perry:

Q. How long have you served as City Manager of Columbia?

A. Approximately five years.

Q. I see. As I understand it, a part of your duties as City Manager happens to be the supervision of the Police Department?

A. That's correct.

Q. Now, your duties, as City Manager of the City of Columbia, I believe, take in the full boundaries of the City of Columbia, do they not?

A. Yes, they do.

Q. Do they take you upon the State House grounds?

A. It is my understanding that they do.

Q. Now, maybe you and I have some difference of opinion concerning your jurisdiction, as I understand it. Do your City Police police the State House grounds?

A. Yes, they have authority to police the State House grounds.

Q. Mr. McNayr, to your own knowledge, do you know who owns the title to the State House grounds?

A. To the best of my knowledge, the State House grounds are owned by the State of South Carolina.

Q. And not by the City of Columbia?

A. Not by the City of Columbia.

Q. For instance, the City of Columbia does not have the right to tax that property?

A. If they have, they have never exercised it.

[fol. 20] Q. Mr. McNayr, perhaps the Court will make a

ruling some time later concerning this matter of the right of the police to enter upon the State House grounds.

A. Let me clarify that position. You must understand that we were there working in cooperation with the State agencies, at the request of the State agencies. We feel that we have a cooperative arrangement with all State and local agencies here in the City and in this area whereby we cooperate fully with the Sheriffs of the various counties, with SLED, with State Highway Patrol. They were all present and had officers present at this time and we were cooperating fully in this action.

Q. I understand, Sir. As to who called who, that might also be some matter of—

A. I can clarify that too.

Q. You had information first that there was a meeting at Zion Baptist Church, didn't you?

A. That is correct.

Q. Sir, did SLED give you that information?

A. I'm sure that it came through the South Carolina Law Enforcement Division because at the scene there were officers from that group.

Q. Did they convey to you—

Mr. Coleman: That is entirely irrelevant.

Mr. Perry: We are on cross examination and we have a right to explore this subject.

Mr. Coleman: Cross examination should stick to the issues.

Mr. Perry: I submit that this is not irrelevant. I think that basically we are dealing with the problem of what motivated the police on this occasion and we are entitled to explore it. We ask the Court to permit us wide latitude on [fol. 21] cross examination as the Supreme Court of this State has held repeatedly that we are entitled to that.

Mr. Coleman: If Your Honor please, these defendants here are charged with the specific crime of breach of the peace. Mr. McNayr has testified as to what he did with regard to the circumstances leading up to the charge made against these defendants. How could it be possibly relevant where Mr. McNayr got his information. I think we would be going down a rabbit road to try to ferret out

all these possible sources of information. He may have gotten it from fifty people. He may have gotten it over the telephone from some unknown individual. I don't think it makes any difference.

Mr. Perry: May it please the Court, I think along the broad issue of Mr. McNayr's authority to act in a policing capacity on this occasion is ~~in~~ issue and we respectfully submit that we have the right to cross examine him.

The Court: Pertaining to the authority on the Capitol grounds, that's not the question before the Court.

Mr. Perry: I respectfully submit that it is and Your Honor will be required to rule on it.

The Court: Objection overruled.

Mr. Coleman: I believe the last question was the further questioning along the line of where this information came from to Mr. McNayr. The objection now is to the further questioning now of Mr. McNayr as to the source of the information in regards to this march.

The Court: The objection is sustained. I don't believe it pertains to the issue in this case.

Q. As I understand it, sir, you cooperated with the Columbia City Police Department, the Richland County [fol. 22] Sheriff Department and the South Carolina Law Enforcement Division on this occasion?

A. On this and other occasions.

Q. I'm talking about this occasion.

A. Yes.

Q. On this occasion you cooperated with the South Carolina Law Enforcement Division?

A. Yes, we did.

Q. Did the Law Enforcement Division call you or did you call the Law Enforcement Division?

Mr. Coleman: Objection.

The Court: The Court has ruled that out, the source of information. Rephrase your question, if you can.

Q. Now, when you went over to the State House grounds on this occasion, how many police officers of the Columbia City Police did you have with you?

A. I can't give an exact number.

Q. Would you give us an estimate, please, sir, you are head of the Police Department, I believe.

A. I would estimate that there were between thirty to thirty-five officers over there.

Q. I see. Was the Chief of Columbia Police present?

A. Yes, he was.

Q. Nevertheless, you, as City Manager, were in command?

A. I don't particularly like your words "in command". We were working cooperatively together.

Q. Your position is one of authority. You are over him.

A. That is correct.

Q. And in matters where both of you see fit to exercise your duties, one of you obviously has to be in charge?

[fol. 23] A. That's right.

Q. And, in this particular situation then, the City Manager would be?

A. Normally, yes.

Q. Was the City Manager in command on this occasion?

A. Yes.

Q. Now, sir, he stated that the group of Negroes students entered the State House grounds. Where did they first enter? Did they enter, for instance, at the horseshoe or down near Assembly Street or near Sumter Street?

A. The primary group entered at the horseshoe.

Q. I see. Now, you speak of the primary group, why do you speak of them in that manner? Were they divided into small groups?

A. They were divided into small groups and I did observe one group at the tail end of the larger group entering the grounds from the Assembly Street corner.

Q. Approximately what was the size of the various groups?

A. They varied in size from fifteen people to possibly thirty.

Q. I see. Now, as they were walking along the public streets, how were they formed? Were they single file or in groups?

A. They were in pairs.

Q. In pairs?

A. That's correct.

Q. Column of twos, in other words?

A. Column of twos.

[fol. 24] Q. And each group consisted of anywhere from fifteen to thirty. Would you estimate the size of the first or primary group?

A. When I speak of primary, I'm talking about the larger groups that moved up towards the horseshoe, and I would say there were probably 150 of those and about thirty that I observed going on the State House grounds down below, which I would term a secondary group.

Q. I'm sorry. I don't believe I understand your testimony. Did not they all enter from the same direction or did they enter from different directions?

A. They entered originally from the same direction.

Q. Did they all enter in from the horseshoe?

A. They did not all enter by the horseshoe, according to my observation.

Q. I see. If they did not enter all by the horseshoe, where did another group enter?

A. I guess you would describe it as the corner of Gervais and Assembly Streets.

Q. I see.

A. I'm not certain of the original group movement. All did not come forward or enter through the horseshoe. It may have been that they did and that later on I saw a group going back up from the corner of Assembly Street into this area.

Q. Where were you stationed at that particular time, Mr. McNayr?

A. I was stationed at the entrance to the horseshoe, adjacent to Blossom Street. In other words, the western entrance I guess you would describe it.

Q. I'm sorry, I'm a little bit mixed up at the moment. Did I understand that the State House grounds are sur-
[fol. 25] rounded by Gervais Street on one side of the horseshoe, that we speak of enters from the Gervais Street side, and near the Post Office you have Sumter Street, and to the rear that is Senate Street and, then, over on the Eastern side Assembly Street. Now, I'm sorry but I thought I heard you say Blossom Street?

A. If I did, I was in error. I meant Assembly Street.

I meant to say Assembly Street, which would be the Eastern entrance to the horseshoe.

Q. You were at the Eastern entrance?

A. That's correct.

Q. At the Assembly Street entrance?

A. At the entrance nearest Assembly Street on Gervais, of course.

Q. Is that entrance down near the corner of Gervais and Assembly?

A. No, I'm talking about the horseshoe, which is directly opposite Main Street with the monument in the center. The entrance that I'm talking about is that eastern most part of the horseshoe, facing Main Street.

Q. Were you inside the horseshoe or were you inside the walk or outside?

A. I was on the sidewalk, just outside or on, whichever way you want to describe it.

Q. How many officers were in your particular group?

A. In the immediate vicinity?

Q. Yes, Sir.

A. Very few, not over two or three.

Q. Was Mr. Henry Walker of the Governor's Office present?

A. Yes, he was.

Q. Was your Chief of Police present?

[fol. 26] A. Yes, he was.

Q. Were a few other of your officers present?

A. Yes, they were.

Q. I believe you said that the primary group entered by the horseshoe and walked around the State House grounds. Did you accompany them around the State House grounds?

A. You raised an objection previously when I tried to tell you the chain of events leading there. I'd be most happy now to do it, if you'd like to hear it.

Q. My question is: did you accompany them?

A. I did not accompany them.

Q. You did not accompany them?

A. That's right. Before the Court can get the whole chain of events, and I'm sure you want them to have the chain of events, I would like very much to tell the Court

exactly what happened because I'm interested in justice in this case, too.

Q. I'm certainly happy to know that, Mr. McNayr, and if we can get it without undue speculation on anybody's part, I'm sure that His Honor would be in a much better position to determine his views.

A. Would you agree to my stating the chain of events?

Q. I would be most happy to have you do so.

A. When the groups approached the State House grounds at the horseshoe, they were met by Mr. Harry Walker of the Governor's Office. Mr. Walker proceeded, in my presence—

Q. Mr. McNayr, you will recognize that we are speaking of a legal technicality. It is not my purpose to keep you from telling the chain of events but it must come of your own observation and not from—

[fol. 27] A. This is coming from my own observation and within my hearing.

Mr. Perry: Your Honor, previously we have objected to statements made by Mr. Walker and Your Honor has ruled on those and I'm afraid I must stick with my objection on that particular point.

The Court: Objection sustained.

Mr. Perry: We'd be glad to have Mr. Walker come and I might say we've invited Governor Hollings and we'd be glad to have him come. I'm sure that we want all of the official light thrown on this case that we could possibly have, but we respectfully urge that Mr. McNayr can tell what he personally saw.

A. This I did personally see and hear but you seem to object to my speaking what I heard and saw.

Q. May I just stick with the line of questioning, Mr. McNayr. As I understand it then, you did not personally accompany the group around the State House grounds?

A. No, I did not.

Q. All right, Sir. Did any of your officers accompany the group around the State House?

A. I'm not certain that any of my officers did. I know that there were officers, SLED people, there were State Highway Patrol people and I believe that some of my offi-

cers walked with them, too, around the grounds but I can't state that categorically.

Q. But the group walked in columns of two on the side walk in the horseshoe, is that correct?

A. That's right.

Q. Are you able, of your own knowledge, to say what course they took as they walked around the State House grounds?

[fol. 28] A. No, I'm not.

Q. Did you see this group at any other time after they might have gone around and come back again?

A. Yes, I did.

Q. Were you stationed exactly where you had been stationed previously?

A. Except across the horseshoe, on the other side of the horseshoe, on the public side.

Q. I think I understood you to say, if I'm wrong, correct me, that some of the young people were carrying signs?

A. You didn't understand me to say that.

Q. I'm very sorry, Sir. Were the defendants speaking to each other?

A. I would assume they were unless there was some enmity between them, they were bound to be.

Q. That does not answer my question, Mr. McNayr. Of your knowledge, did you observe them saying anything to each other or to anybody?

A. If I may, if it please the Court, the attorney seems to be willing to take my word for some hearsay and not for others. He objected to what Mr. Walker had to say but he's not objecting to what these people had to say.

The Court: If I understand it, the defense attorney is not asking what was said. He is asking did you hear any words or any noises between the defendants, as I understand it.

A. The air was full of noises, of course. People were talking and jabbering and carrying on.

Q. That still does not answer my question. Did the young people, the young Negroes, make any noises among themselves?

[fol. 29] A. Yes.

Q. What did they say?

The Court: The Court will have to rule out that question of what they said. As I ruled previously, that is hearsay.
Mr. Perry: Yes, Sir.

Q. When they first entered the horseshoe area, I believe you said that there were only a few officers present, not many bystanders, the bystanders later came, as the walking ensued?

A. That's right.

Q. So that you were able to see and observe and hear a great deal at that time, which you may not have been able to hear when the group became larger?

A. Yes.

Q. Would that be correct?

A. That's correct.

Q. Were the Negro college students or other students well demeaned? Were they well dressed and were they orderly?

A. Yes, they were.

Q. That was really what I was getting to. You regard them as an orderly group of persons?

A. Yes, they were up to the point when I asked them to disperse.

Q. I understand. I understand you perfectly. There was nothing about their demeanor, their appearance, their dress nor their conduct which violated any law that you have any knowledge of, was there?

A. Now, I can't answer specifically on that. I did not originally state that they were carrying placards, but they were carrying placards, whether that's a violation of the 1st, 30th law, I'm not free to say but, other than that, they were well demeaned.

Q. You did not observe any boisterous conduct on their part?

A. Not initially, no.

Q. Mr. McNayr, I believe you said that you had stationed around the State House grounds approximately thirty officers of the Columbia City Police?

A. I think it would be better to say that Chief Campbell had stationed them around the grounds.

Q. You said that Chief Campbell had about thirty. Now, did Chief Strom have a group of officers present?

A. There was a group of officers present from SLED.

Q. Would you estimate the size of Chief Strom's group?

A. I'd find it difficult for many of Chief Strom's men are not known to me personally.

Q. Then, in addition to the thirty Columbia City Police, there were a number of South Carolina Law Enforcement Division men?

A. That's right.

Q. Were there also many from the Richland County Sheriff's Department?

A. I'm not at all certain.

Q. I believe you previously stated that on this occasion you were in touch with the Sheriff's Office and the South Carolina Law Enforcement Division?

A. I said we were cooperating. We have called them on this and other occasions.

Q. You do not specifically recall that there were men from the Sheriff's Office present?

fol. 31 A. No, there, again, I'm not personally familiar with the various officers in the Sheriff's Office.

Q. Now, since this was during the noon hour or approaching the noon hour, you have stated that during the lunch hour many of the people began to congregate around the State House grounds?

A. Yes.

Q. Can you describe the apparent attitude of the group that congregated as the Negro students walked around? By that I mean, I am quite frankly asking you whether or not they were apparently curious or was their attitude hostile or was it otherwise?

A. My attorney is not objecting but I'd like to inform the Court that this is the very line of questioning which the attorney objected to just a short time ago, conjecture on the part of the witness.

Mr. Coleman: If Your Honor please, I have no objection to Mr. McNayr answering the question. It's a proper question.

The Court: The witness will answer.

A. I would say initially the crowd could be best described as curious as to what was going on.

Q. Initially?

A. Initially.

Q. Are you in a position to estimate the size of the group of persons, on lookers, who congregated around the State House during the time the student group attempted to walk around?

A. I think I have already testified to that.

Q. I'm not sure you have.

A. I would estimate it at around 250 to 300 people and I'm not an authority on the size of crowds.

fol. 32 Q. I believe you estimated about 200 Negro students walking around?

A. Yes.

Q. I have reference to the group of on lookers; that's the ones I was asking about.

A. That's the group that I have reference to also.

Q. Where did the group of on lookers congregate? Did they congregate at the horseshoe or all around the State House grounds?

A. I have previously testified this: that they may well have been all around the State House grounds but, if they were, they were beyond my observation, and, if there were on lookers on the whole area, the estimate of numbers would probably have risen two or three times. I don't know. The people that I saw were congregated right around the horseshoe area, many backed up into the driveway, into the horseshoe area, across the sidewalk on the lawns adjacent to the horseshoe area and across Gervais Street, on the corner of Main and Gervais, on both corners of Main and Gervais.

Q. Did they block the street?

A. There was blocking of the sidewalks, not the streets.

Q. So, the on lookers blocked the sidewalks?

A. There was blocking of the sidewalks--yes.

Q. Did you take any official action against the on lookers who were congregating on the streets?

A. I didn't have an opportunity to, sir.

Q. You had an opportunity to say something to the Negroes?

A. Not only to the Negroes, but to the whites on the side of the street where I was located.

[fol. 33] Q. Now, sir, do I understand you to say that you did take official action to have the on-lookers move on or that you did not?

A. We took official action to have them clear the sidewalks in the area adjacent to where we were standing yes.

Q. As far as you can determine the appearance of the group of on-lookers, were they merely curious?

A. You're talking about as the demonstration went on?

Q. Yes, sir.

A. It's difficult to say. I'm afraid that curiosity changes and brings forth possible elements which could create difficulty.

Q. Did you see any of those possible elements?

A. Yes, I did, as I have on every occasion when these groups have demonstrated.

Q. Speaking of this particular occasion, did you see the possible elements there that day?

A. Yes.

Q. Who were those persons?

A. I can't tell you who they were. I can tell you they were present in the group. They were recognized as possible trouble makers.

Q. Did you and your police chief do anything about placing those people under arrest?

A. No, we had no occasion to place them under arrest.

Q. Now, sir, you have stated that there were possible trouble makers and your whole testimony has been that, as City Manager, as supervisor of the City Police, your object is to preserve the peace and law and order?

[fol. 34] A. That's right.

Q. Yet you took no official action against people who were present and possibly might have done some harm to these people?

A. We took no official action because there was none to be taken. They were not creating a disturbance, those particular people were not at that time doing anything to make trouble but they could have been.

Q. Did you order them off the State House grounds?

A. They were not on the State House grounds, those that I observed.

Q. Did you order them off the streets adjacent?

A. They were on public sidewalks and we made them clear the sidewalks so that people could get through.

Q. You don't know who these people were but nevertheless you recognized them as trouble makers?

A. I don't know them by name—no.

Q. But the minute you spotted them, you knew they were trouble makers?

A. I knew there was a possibility of trouble there.

Q. Yet you took no official action against them?

A. The official action I took was to get rid of the cause of the possible difficulties.

Q. But you just said the Negro students weren't doing anything wrong, that is, in terms of misdemeanor?

A. They were not obeying lawful orders, what I consider lawful orders in dispersing. They were the cause of the group gathering. The group, the so-called trouble makers, would never have appeared had it not been for the demonstration taking place.

Q. Did you talk to the trouble makers?

A. No, I did not.

[fol. 35] Q. You don't know why they appeared, do you?

A. I think it's quite apparent why they appeared. It's apparent to you and it's apparent to me and it's apparent to the population of this area why they appeared.

Q. Yet, if it was so apparent that they were trouble makers and they had come because of this situation, your chief law enforcement official of the City of Columbia took no official action by placing them under arrest?

A. I took official action by moving the cause of the possible difficulty.

Mr. Coleman: If Your Honor please, I'm hesitant to interrupt counsel in this cross examination, however, if I have counted correctly Mr. McNayr has answered that same question four times and I can't see any point in belaboring that point. He said he did not place them under arrest, he said he had no reason to and I can't see any purpose in stretching this thing out interminably.

The Court: Objection sustained.

Q. Mr. McNayr, you have stated that you knew one man whom you identified as the apparent leader of student movements in Columbia?

A. Yes.

Q. Do you know any of the other students who were involved?

A. I know them only by sight.

Q. Do you know all of them by sight?

A. No, that would be impossible.

Q. Thank you, sir. Do you know the defendants in this case by sight?

A. I don't believe so, no.

[fol. 36] Q. So, you're not really able to identify them as regards their activity in any particular part or anything that might have happened that day?

A. I think I might recognize one or two out of the group of eight.

Q. So far as you know, did any of the officers having any authority concurrent with yours place any of the other persons under arrest, who were recognized as trouble makers?

A. Not to my knowledge.

Q. So, that no one, not the South Carolina Law Enforcement Division, the Columbia Sheriff's Department, the Columbia Police Department nor in fact the Governor's Office, took any action against other persons who were recognized by you as being trouble makers on this occasion?

A. If I may, I think you may have misunderstood what I said. I said they were possible trouble makers. If I may continue, I'm talking about what we described as the long-haired kids, who appear on the streets of Columbia on these occasions; I'm talking about some of our rougher element, who tend to appear on the occasions of these demonstrations. I may have misused the word "trouble makers". They are potential trouble. They represent to me trouble.

Q. Mr. McNayr, is it the policy of your administration, when persons whom you recognize as potential makers

Mr. Coleman: Objection, Your Honor. We are getting into something that has absolutely nothing to do with the facts in this case. The policy of the City Manager might

embrace a hundred factors, which would have nothing to do with this case. He testified as to the actions; certainly [fol. 37] he cannot cross examine on any part he has testified to only as far as the facts and what he has done on the scene. Why get into the field of policy and why things are done? That is ridiculous.

Mr. Perry: I just wanted to know, Your Honor, whether or not a gangster, here on our streets, would stop me from walking down the streets and you'd put me in jail—why not put the gangster in jail?

The Court: Objection sustained. We're getting too far out as to policy and what would happen under a given set of circumstances.

Q. As I understand, sir—

Mr. Perry: Your Honor, do you take judicial notice of the fact that the State House grounds are occupied by the Executive Branch of the South Carolina government, the Legislative Branch and the Judicial Branch, and that, during the period covered in the warrant in this matter, to wit: March the 2nd, the Legislature of South Carolina was in session. Do you take judicial notice of those facts?

Mr. Coleman: We'll stipulate those facts.

The Court: All right.

Q. Thank you, Mr. McNayr.

Re-direct examination.

By Mr. Coleman:

Q. Just one more question, Mr. McNayr. With reference to the Legislature being in session at the time of this occurrence, the fact which has been stipulated by counsel in this case, did that fact have any bearing on your actions to keep down a breach of the peace or any possible or probable circumstances which, in your opinion, might lead to the breach?

[fol. 38] A. Yes, it did. I was informed soon after arriving that the House of Delegates was out of session but the Senate was still in session, and certainly that was another

of many factors which entered into the decision to hold or to stop and disperse this group.

Q. Mr. McNayr, you were asked on cross examination as to the orderliness of the crowd. I assume that the crowd there meant the entire group, including the students and others. I believe you testified that up to a point the students were orderly. Were they orderly throughout the time of your presence at the scene?

A. No, they were not.

Q. What occurred after the orderliness ceased?

A. There was general singing, stamping of feet, tramping, singing in a very loud voice, mostly hymns. I would say. And, again, if I may use Mr. Carter's name, Mr. Carter's talk to them about dispersing.

Mr. Perry: May I inquire of counsel as to whether or not he has reference now to before the students were placed under arrest or afterwards?

A. My testimony is before they were placed under arrest, just before.

Q. Did you recognize any?

A. No, I didn't.

Q. Just two more questions. With regard to the I believe you used the term possible trouble makers were any of those told to move on from the sidewalks?

A. Yes.

Q. Did any refuse to do so?

A. No, they did not.

Q. I believe you have already testified that you asked the Negro students to disperse, ordered them to?

A. I did through the recognized leader.

Q. Did they obey that order?

[fol. 39] A. No, they did not.

Re-cross examination.

By Mr. Perry:

Q. Mr. McNayr, you said they sang songs, I believe you said some of them started songs before they were placed under arrest?

A. Yes.

Q. As far as you know, did everybody start singing before they were placed under arrest or did only some of them?

A. I could say that everyone did.

Q. You did not recognize any of the songs they were singing?

A. No, I didn't. In fact, I wasn't paying particular attention to them. All that I know was, that there was a good deal of talk and shouting along with the singing.

Q. Did you hear them singing the Star Spangled Banner?

A. Yes, I do recall them singing the Star Spangled Banner.

Q. That's a very pretty song, isn't it?

A. It is, if properly sung in the right spirit but it seemed to me it wasn't in the right spirit on that occasion.

Q. They weren't singing in a contemptuous manner, were they?

A. Not in a contemptuous manner but in a loud and very disorderly manner.

Q. Well, Mr. McNayr, the Star Spangled Banner sounds better when it rises so full.

A. Well, maybe I wasn't in a position to appreciate it then.

Q. Possibly that was the case.

[fol. 40] The Court: I don't think we should go into whether or not this song was sung or in what manner it was sung. What does that have to do with it?

Mr. Perry: My only purpose, of course, is to counsel asked Mr. McNayr about a point when they turned from orderliness to boisterousness and we are now describing the boisterousness that Mr. McNayr has in mind. Now, he said among other things, the Star Spangled Banner and I'm at loss to see anything boisterous about the singing of the Star Spangled Banner.

The Court: We're not talking about the quality of the singing.

Q. Mr. McNayr, did you hear them sing America?

A. I didn't recognize it.

Q. Just as you were not in the mood to hear the Star Spangled Banner, they might have sung that?

A. I said I was not in the mood to appreciate the way they sang it. Now, you would have to be present, sir, to understand what I'm talking about, the difference between singing something in an orderly fashion and doing it boisterously, stamping your feet and shouting and yelling at the same time. That is what took place.

Q. Isn't it a fact that most of the singing took place after the arrest was made and during the time the police were carrying them to the Police Station?

A. There was an awful lot taking place but this took place after David Carter harangued each group and I mean harangued—it was a real rabble-rousing talk, "Will you do it? Will you not do it? I'm going to jail, will you go to jail?"—that sort of thing.

Mr. Perry: Your Honor, you have ruled out anything that was said by David Carter. Will you now direct that that be stricken?

[fol. 41] Mr. Coleman: Your Honor, will you instruct counsel not to phrase his questions so as to bring out exactly what he objected to here earlier?

A. If you don't want to hear it, don't ask the question.

The Court: The testimony given as to what David Carter said is stricken from the record.

Q. Mr. McNayr, the real reason these people were placed under arrest was because they walked around the State House grounds and, after they were told not to go again, they entered again in violation of the orders that were given to them? That was the real reason they were placed under arrest?

A. No, indeed. That has not been testified to in any way by me.

Q. That is not the real reason they were arrested?

A. No.

Q. Had they simply walked past this person who told them not to proceed again, they would not have been placed under arrest?

A. If that person had requested that they be placed

under arrest, we would have cooperated, but that was not the circumstances, so far as I was concerned. You will not allow me to give you the circumstances, which I tried to do and you said that was hearsay.

Q. Thank you, Mr. McNayr.

The Court: Court will recess for ten minutes. (11:50 a. m.)

(Court reconvened.)

[fol. 42]

CHIEF L. J. CAMPBELL.

Whereupon, Mr. Coleman called Chief L. J. CAMPBELL, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Coleman:

Q. Mr. Campbell, I believe you are the Chief of Police for the City of Columbia?

A. Yes, sir.

Q. Did anything come to your attention on March the 2nd last which caused you to make your appearance in and around the State House in an official capacity?

A. It did.

Q. Will you relate in your own words exactly what you did in regard to any matter within your personal knowledge?

A. I received information that a group of students were gathering at the Zion Baptist Church and I later observed it myself, personally. I informed Mr. McNayr, City Manager, and later I picked him up and we both went to the Zion Baptist Church on Washington Street, Washington and Gadsden Streets. There we found a group of students at Zion Baptist Church.

Q. Where did you go from Zion Baptist Church?

A. We left Zion Baptist Church and went to the State House, the horseshoe at the State House.

Q. Did anything occur there?

A. We arrived at the State House a short time ahead of the marching group.

Q. What marching group? Would you describe them?

A. A group of Negro students.

Q. Where did they make their appearance?

A. They came up Gervais Street, from Gadsden Street to Gervais and Gervais up to the State House.

[fol. 43] Q. Where were you at that time?

A. I was on the East corner of Gervais and the horseshoe, Main Street.

Q. Did you talk to the group?

A. I did not talk to the group at that time.

Q. Were any official instructions given to the group at that time?

A. They were.

Q. What was the nature of the instructions?

A. They were instructed that they had a right, as a citizen, to go through the State House grounds, as any other citizen has, as long as they were peaceful.

Q. What happened then, so far as the activity of this group of students was concerned, immediately thereafter?

A. Each group was instructed the same. Then they proceeded through the State House grounds. They continued going through the State House grounds.

Q. Did you remain in the horseshoe during this time?

A. In and around the horseshoe.

Q. For how long a period of time did the students proceed in and about the State House grounds without interference from you?

A. I would say approximately thirty to forty minutes before they were given instructions from our City Manager that they should disband and they were given fifteen minutes to decide whether they wanted to disband or not.

Q. Chief Campbell, to your knowledge, did any police officer or anyone else interfere with the students' activities during this thirty or forty minute period, which you have just related?

A. They did not.

[fol. 44] Q. I believe about this horseshoe in front of the State House, there are sidewalks on both sides and lanes for vehicular traffic around the horseshoe and back out into Gervais and Main Street?

A. That's correct.

Q. At the time the students first made their appearance there, were there numbers of other people in and about the State House grounds?

A. When they first arrived?

Q. Yes.

A. There were a few civilians and several police officers.

Q. Did you observe this?

A. Yes.

Q. After a period of thirty or forty minutes, that you have just stated that the students marched without interference, did you observe the crowd at that time?

A. I did.

Q. Had it increased, decreased or remained the same?

A. Considerably increased.

Q. Can you estimate the number of the crowd approximately, including the students?

A. Across Gervais Street and also on the sidewalks and the steps of the State House, there were 300 or 350.

Q. Now, with relation to the sidewalks on both sides of the horseshoe, on Gervais Street adjacent to the State House grounds and the lanes for vehicular traffic around the horseshoe, how was the crowd situated with reference to those sidewalks and lanes?

A. They were right crowded and, from time to time, we had to ask the pedestrians to move on.

Q. Was the street blocked?

[fol. 45] A. We had to place a traffic man at the intersection of Gervais and Main to handle traffic and pedestrians.

Q. Was a vehicular traffic lane blocked?

A. It was, that was in the horseshoe.

Q. After a period of thirty or forty minutes in which these students were allowed to march without interference of any kind, did you then take further official action?

A. As I have stated, they were given to about 1:00 o'clock, or fifteen minutes, to leave and at 1:15 they did not leave, and then they were placed under arrest.

Q. You were there, Chief Campbell, and saw the crowd of people, students, those who had come upon the scene during the thirty or forty minute period, why did it appear to you that official action was due to be taken?

Mr. Perry: Your Honor, we object to the question. I respectfully submit that you have previously ruled, with regard to the testimony of the previous witness, that he could tell what he did, but as to his reasons, I believe that you did not permit the witness to go too much into a speculative area. We submit that the question may call for the witness' conclusions or reasons, some of which might be speculative as to what prompted them to act. Certainly, Chief can say what he did but as to why he did it would be for Your Honor to determine.

Mr. Coleman: If Your Honor please, there is absolutely no element of speculation in Chief Campbell telling why he did what he did. He's not speculating as to any facts. He has made a criminal charge. He is certainly entitled to tell why he made it.

The Court: I'll have to overrule the objection. In view of his experience, the objection is overruled.

[fol. 46] A: I would say in my experience over a period of years I felt that it was time that action should be taken.

Q. Why?

A. To keep down any type of violence or injury to any one.

Mr. Perry: Now, Your Honor, we object and ask that that be stricken on the grounds that the answer is speculative and conjectural. Chief says to keep down any violence and there is no testimony that any violence was about to take place.

Mr. Coleman: If Your Honor please, the Chief is testifying as an expert police officer. He has not stated that violence would take place. He has said that drawing from his experience as a police officer, during the factors which were involved in this situation, it was his opinion that there could possibly be violence and disorder arising out of this situation. I believe he is fully entitled to testify.

The Court: Objection overruled on the same grounds as before, his experience, my previous statement as to his experience.

Mr. Coleman: If Your Honor please, may I see the warrant?

The Court: I believe counsel for the defendants has it. Would you like the Court to have some copies of that made?

Mr. Perry: I'd be most grateful, Judge.

The Court: I'll have some made for you.

Q. Chief Campbell, I hand you a paper entitled "Arrest Warrant", which is signed - the affidavit of which is signed by one L. J. Campbell. Would you look at that and see if you recognize your signature there?

A. Yes, sir.

Q. You did sign that warrant?

[fol. 47] A. Yes, sir.

Q. Would you please look at the names contained in the warrant?

A. That is my warrant and that is my signature and that is the names.

Q. Do you recognize that warrant as containing the names of some of the people who were arrested on March the 2nd?

A. I don't remember all of the names but I would say that is the warrant that I signed.

Q. And it contained the names of the students?

A. That's right.

Q. You don't recognize, of course, any of these people personally?

A. In the whole entire group, I know eight or ten or twelve, something like that personally.

Q. Chief Campbell, do you have any statement which you would like to make in regard to this situation, regarding the facts involved?

A. No, not right at the moment.

Cross examination.

By Mr. Perry:

Q. Chief Campbell, I believe you stated that as the various groups went into the State House grounds, you personally admonished each group that they had a right to go in?

A. I didn't personally.

Q. I'm sorry I misunderstood you. Who did this?

A. Mr. Walker.

Q. I see. Do you agree with Mr. McNayr's estimate of the size of the various groups of young people as they walked through the grounds? I believe Mr. McNayr stated (fol. 48) that they numbered from fifteen to thirty persons in each group.

A. I would say that they weren't quite that large but he's approximately right.

Q. You say they weren't quite that large?

A. I'd say twenty to twenty-five to thirty. At times the group was larger than others; more would get together and some would go off to themselves in smaller groups and in that period of time, it would vary a whole lot.

Q. I understand.

A. At times, it may have been thirty and then it would be twelve or fifteen.

Q. Each group of students walked along in column of twos?

A. Sometimes two and I did see some in single file.

Q. There was ample room for other persons going in the same direction or the opposite direction to pass on the same sidewalk?

A. I wouldn't say they were blocking the sidewalk; now, that was through the State House grounds.

Q. Their demeanor was generally good?

A. At times.

Q. Wouldn't you say they were well-behaved?

A. At times.

Q. You stated in your affidavit, Chief Campbell, that the young people were carrying placards?

A. They had cards.

Q. I do not believe that you have previously testified concerning these placards?

A. No, I haven't mentioned the cards.

Q. But in the affidavit which you signed, before the issuance of this warrant, you did make mention of the fact (fol. 49) that they assembled, impeded the normal traffic and they paraded with placards?

A. I wouldn't say that all of them had them, but some of them did.

Q. Some of them did. Of course, you do not know whether any of the defendants on trial today had placards?

A. I couldn't swear to that.

Q. What was the nature of the language used on the placards?

A. It was religious verses. I read some of them.

Q. I see. Chief Campbell, have you previously had occasion to deal with groups of Negro students on the streets of Columbia in recent times?

A. I have.

Q. Are you aware of a widespread student movement which is designed to possibly bring about a change in the structure of racial segregation laws and custom?

A. I am.

Q. Would you regard the group, which walked through the State House grounds on March the 2nd, as a group for such a purpose?

A. There was a purpose, I would think.

Q. Were the signs which they carried in any way depict that particular purpose?

A. It resembled that, yes.

Q. Did you confiscate any of those signs, Chief?

A. I did not.

Q. But it suffices to say that the signs did bespeak the general purpose?

A. The signs were taken up but they were not taken up by us.

[col. 50] Q. I understand. Of course, you do not regard the carrying of signs as breach of peace, do you?

A. Well, it might mean—as to what purpose was behind it.

Q. Mr. McNayr has estimated that you had present some thirty or more, or possibly a few less, police officers of the City of Columbia?

A. That is a mistake. Mr. McNayr did not know how many officers I had up there.

Q. How many did you have?

A. I had approximately fifteen.

Q. Were there other officers of authority?

A. There were some State Highway Patrolmen; there were some South Carolina Law Enforcement officers pres-

ent and I believe, I'm not positive, I believe there were about three Deputy Sheriffs.

Q. So there were a lot of police officers around on this occasion. Wouldn't you agree, Chief Campbell, that the presence of a large number of police officers serves to attract a lot of on-lookers, perhaps as much, if not more so, than the Negro college students walking around the State House?

A. The two together would create quite a bit.

Q. So, the curiosity lookers were attracted by police officers as well?

A. The two together would create quite a scene.

Q. Did you see, included among the on-lookers, any persons whom you regarded as trouble makers?

A. Well, it's hard to pick out trouble makers all the time, you know, with a large group of people; you don't know what might occur and what's in the mind of the people.

[fol. 51] Q. But, sir, you did, at one time, after perhaps conferring with other officers, direct the students to disband; you or some other officer did. Is that correct?

A. That order came from the City Manager.

Q. I see. Was any order given to the on-lookers to disband?

A. They were asked to move on.

Q. Did all of them move on when they were ordered to move on?

A. A lot of them moved on, yes.

Q. Since these young people were generally well-meaned, it was actually the fact that they were walking around the State House grounds with placards in a group, which actually caused their arrest, isn't it?

A. Well, they were singing and right noisy at times, particularly after the order was given to give them fifteen minutes to disband.

Q. You said that you observed them walking around the State House grounds for some thirty to forty minutes; did I understand you correctly?

A. I said approximately.

Q. During this period was there any singing?

A. Yes. There was some singing in the horseshoe and there was some singing on the East corner of the horseshoe.

Q. I see, and afterwards they were given some fifteen minutes to disband and I believe that also came from the City Manager?

A. That was approximately at 1:00 o'clock.

Q. They were given fifteen minutes to disband?

A. Yes.

Q. Having not disbanded, you actually placed them under arrest? Did you or some other officer?

[fol. 52] A. All of the officers. I placed some under arrest. Other officers placed some.

Q. I have reference to what authority—did the Columbia Chief of Police or the Director of South Carolina Law Enforcement Division?

A. I have authority on State property under a Special Act.

Q. You do have special authority to police the State House?

A. Yes, sir, passed by the Legislature.

Q. As I understand you, sir, the various groups of students walked through the State House grounds, either in single file or in columns of twos, they walked in such a manner that it was possible for other persons, using the same sidewalk, to pass either going in the same direction or the opposite direction?

A. I would say so—yes.

Q. So that, therefore, the Negro students did not block the sidewalks?

A. Not in the State House grounds. I didn't go in the State House grounds. I just observed that from a distance. I stayed at the corner of Gervais and Main at the horseshoe all during the whole period of time. I did not leave there. I did place men over the area, back of the State House and over the grounds.

Q. Did they not block anybody?

A. I did not go back into the grounds myself.

Q. Within your own view, did they block anything?

A. At times they blocked the sidewalk and we asked them to move over and they did.

Q. They obeyed your commands on that?

A. Yes.

Q. So that nobody complained that he wanted to use the sidewalk and he could not do it?

[fol. 53] A. I didn't have any complaints on that.

Q. How about the vehicular traffic, either in the horseshoe area or otherwise?

A. The horseshoe area was blocked by the heavy traffic on Gervais.

Q. It was blocked by whom? The police?

A. Pedestrians and civilians, policemen and automobiles.

Q. I see, but not necessarily by these defendants?

A. No. At times, of course, they would block it when they were marching across.

Q. Naturally, as they walked across but only for a reasonable period of time. That horseshoe area that we described, that leads up to the front of the State House building, is not really a thoroughfare, is it?

A. No.

Q. It's a limited parking area used by members of the State House of Representatives and other officials in the State House building?

A. I think that's correct.

Q. It's not your contention then that these defendants blocked anybody's use of that area?

A. Not to my knowledge. At times, I said, they were asked to move and they complied with our request.

Q. Then, their crime, if we can call it a crime, seems to be their refusal to disperse when they were given orders to disperse?

A. That's right and the noise.

Q. Wouldn't you agree that it was their refusal to disperse that got them arrested?

A. Well, no, not all together. As I have stated before, as I have testified, they were moved for reasons to avoid trouble. We were afraid that trouble might have come.

[fol. 54] Q. I see. You were afraid trouble might occur; from what source?

A. You can't always tell.

Q. But, if you regarded on this occasion it was sufficiently

apparent to require you to arrest them, certainly you must have had something in mind?

A. It is my duty to try to avoid trouble if I can, as a police officer.

Q. I fully appreciate that. I certainly do, but I simply asked you, where was the trouble?

A. Actually any trouble hadn't happened but if you can prevent trouble, it is your duty to do so.

Q. I go along with that. Are you able, sir, to say where the trouble was?

A. I don't know.

Q. You didn't spot it really anywhere, did you?

A. No. We didn't give it a chance to happen.

Q. Chief, as far as you know, is there any ordinance of the City of Columbia regarding groups walking in concert on the public streets of the City of Columbia?

A. With a group of over fifteen, you must have a permit.

Q. These persons weren't charged under that ordinance?

A. We have an ordinance where you cannot block the sidewalk.

Q. I understand you signed all of the warrants in these cases and you signed them under the common law offense of breach of peace?

A. Breach of the peace.

Q. You're not charging the violation of any ordinance?

A. No.

Q. Thank you, Chief.

[fol. 55] Re-direct examination.

By Mr. Coleman:

Q. You spoke of certain orders being given by one Harry Walker to the students, telling them to disperse and directing the activities or attempting to in some way; who is Harry Walker?

A. He is with the Governor's Office.

Q. What is his official capacity?

A. Liaison officer, with the Governor's Office, I think. I'm not sure.

Q. Did he have charge of the officers there that day?

A. It was my impression that day that he was substituting for Chief Strom, who was out of the City. That was my impression.

Q. I believe you stated that the behavior of the students at times was orderly and good. Were there times when it was not?

A. That's right.

Q. Would you describe that, please?

A. That's when instructions were given to the students that they had fifteen minutes to make up their minds whether to leave or stay.

Q. What was the nature of the activity then?

A. Hollering in a very loud voices.

Q. Did the entire group of students there, including these defendants, appear to you to be acting in concert as a group, as a whole?

A. I don't get your question.

Q. The entire group of marching students, did they appear to you to be acting in concert or acting together in one common action or purpose?

A. Yes, I would say they were following their leader, one leader, each group had a leader and, when instructions were given by Mr. McNayr as to the fifteen minutes, they [fol. 56] had instructions from the head of the group, which we considered him to be the head of the group.

Q. Did it appear to you from what you saw and heard that they were all acting together as a group?

A. That's right.

Q. You were questioned as to the number of officers on the scene and the point was made that a large group of officers might have attracted the crowd. Ordinarily, such a group of officers are not stationed at the State House?

A. No, sir.

Q. Why were they there that day?

A. To keep order.

Q. Was they being there have any relation to the students being there?

A. Yes. That's why we were there.

Q. Otherwise you would not have been there?

A. No, sir.

Q. No further questions.

By Mr. Perry:

Q. Nevertheless, the presence of officers helped attract the crowd, didn't they, Chief?

A. The presence of the officers and the group of students drew the crowd.

Q. May I ask you this, Chief? You, along with other officers assisted in making these several arrests, didn't you?

A. I would say I was with the group of thirty to forty, something like that.

Q. Wouldn't you say that all of the students submitted peacefully to arrest?

A. When I informed them they were under arrest, they gave no trouble.

[fol. 57] Q. I believe as a matter of fact you, along with other officers, walked with them around with them to the Columbia City Jail and the County Jail?

A. I lined them up and put an officer in front and instructed them to follow him and put one on each side and on the back. I didn't walk with them. I rode.

Q. That's the prerogative of the Chief, I believe. These were just young college and high school students, were they not, obviously well-dressed, well-behaved, except for their refusal to disperse when the officers told them to do so?

A. I think they were all students except a few.

Q. Except a few? Thank you, Chief.

Mr. Coleman: Thank you, sir.

(Witness excused.)

Whereupon, Mr. Brandon called Mr. DAN F. BECKMAN, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Brandon:

Q. Will you give us your full name, Mr. Beckman?

A. Dan F. Beckman.

Q. What is your official position?

A. Assistant Chief, South Carolina Law Enforcement Division.

Q. How long have you been with the Law Enforcement Division?

A. A little over thirteen and a half years.

Q. Directing your attention to March the 2nd, the date in question here, did you have occasion to go to the State House grounds?

A. Yes, I did.

[fol. 58] Q. At what time did you arrive there?

A. Shortly after 12:00.

Q. After 12:00 o'clock?

A. Yes.

Q. What were the conditions existing when you got there?

A. There were a large group of college students, on Gervais Street at the entrance to the horseshoe and, as I got there, they started coming, they were going through in single file or groups of twos.

Q. Going through the grounds?

A. Going through the grounds.

Q. In what direction?

A. They started down the horseshoe and I observed them going around to the right of the building and on around and I was informed that they were being permitted to walk through there in a peaceful fashion.

Q. How many do you think would be your estimate were in the group at that time, Mr. Beckman?

A. It's hard for me to tell but I would imagine twelve or fifteen in that first group that went through, that I had an opportunity to see.

Q. Was there more than one group moving through?

A. At that time, I saw only one group going through.

Q. Could you see any others at any other positions around the State House grounds?

A. Later I did observe other groups going around the State House.

Q. Do you know how many defendants were subsequently arrested on that occasion?

A. That day?

Q. That day.

A. I believe it was 189 or 190, I'm not certain.

[fol. 59] Q. How long did this marching continue after you arrived there?

A. I would imagine between forty five minutes and an hour.

Q. Thereafter, to your knowledge, were the groups advised that they had a certain period of time in which to disperse or leave the premises?

A. Yes, sir, by Mr. McNayr. I was over facing Main Street, that would be to the right of the horseshoe.

Q. What was the reaction of the groups of Negro students at that time, when they were informed of that?

A. They started singing, hollering and shortly after that, I imagine, they decided they didn't want to go back to where they came from and they started back through.

Q. What occurred when they started back through?

A. I placed a group under arrest as they started to continue on.

Q. Other officers arrested others?

A. Yes.

Q. Do you remember any particular song that was sung by those students?

A. I believe one of them was "I Shall Not Be Moved". I remember their singing the Star Spangled Banner around on the side of the State House; that was after they were placed under arrest.

Q. Chief, after you had been there, did or did not any other people or groups of people arrive?

A. Yes, I saw the groups of people over in front of the hotel and there was a group right at the entrance of the horseshoe. From time to time, you had to continue to ask them to move on.

Q. Did they move on when you asked them?

A. Yes.

[fol. 60] Q. How many do you think subsequently collected there? Give an estimate?

A. I'd say around 250 to 300.

Q. After you had arrested this group of students, did you learn where they had come from or do you, of your own knowledge, know where they came from?

A. Yes, I know where they came from. You mean how they originally started from?

Q. Not particularly with reference to the marching to the grounds, but where were they from? Where were their homes?

A. Some of them gave their addresses from all over the State.

Q. Did any of them come from any other schools other than local schools here in Columbia?

A. Yes, sir. Some came from State A & M, Claffin, Sterner, Mathis, Benedict and some of them were high school students. I noticed that on the arrest tickets.

Q. High school students?

A. That's right.

Q. Any of them you know were from high schools out of the City of Columbia?

A. No, but I recognized some from Orangeburg, students from either one of the two schools there.

Q. The State schools over there? Chief, do you know of any other facts in connection with this occurrence that you would like to testify to, that you think is relevant?

A. No, sir.

Q. Answer any questions the other attorney has for you.

(fol. 61) Cross examination.

By Mr. Sampson.

Q. Your name is Mr. Beckman, I believe?

A. That's right.

Q. You are the Assistant Chief of SLED, is that right?

A. That's correct.

Q. I'd like to ask you a simple question, if I may. Who was in charge of this arrest?

A. There was several of us that made arrests over there. I arrested some, Chief Campbell arrested some, and other officers arrested some.

Q. Which one of you gentlemen made the decision to arrest these young people?

A. What?

Q. Which one of you gentlemen present made the decision to arrest these young defendants?

A. I made my own decision.

Q. I see. It was based on your decision that the other officers acted?

A. No.

Q. As I understand your testimony, as Assistant Chief of SLED, you decided that some of them should be arrested and other officers of the City of Columbia, being present, independently decided that they should be arrested, is that right?

A. That was after Mr. McNayr asked them to disperse and gave them fifteen minutes to disperse and all that singing and stomping around and hollering took place, and he asked them to leave and they didn't leave; they continued to go on.

Q. I see. Was it Mr. McNayr's judgment that caused you to arrest some of these defendants or your own judgment?

[fol. 62] A. What I did, I did on my own because I realized what possibly could take place.

Q. No conflict of authority between SLED and the City of Columbia as to how you should arrest people for the breach of peace?

A. No.

Q. How long did you say that you have served as a law enforcement officer?

A. Thirteen and a half years.

Q. Do you consider yourself an expert law enforcement officer?

Mr. Brandon: If Your Honor please, I think the prosecution can stipulate that Mr. Beckham is an expert law enforcement officer.

Q. Do you, sir?

A. What is the question?

Q. Do you consider yourself an expert law enforcement officer?

A. I consider myself a law enforcement officer based on experience that I've had.

Q. Had these students been students from the University of South Carolina or similar white schools in the State of South Carolina, would you or would not not have arrested them based on the same conduct?

Mr. Brandon: Objection, Your Honor. We're trying a case of breach of peace against eight individual Negro defendants and there's no relevancy whatsoever as to whether or not Chief Beckham would have arrested a white person or a person of any color. It is presumed, of course, that a law enforcement officer will do his duty.

The Court: I am inclined to agree with the objection but as my policy has been, and will continue to be, to lean [fol. 63] over backwards to see that the defendants get justice—objection overruled.

Q. Will you proceed to answer the question?

A. Would you repeat the question, please?

Q. I asked you, if I remember—would the reporter repeat the question?

(Reporter repeated the question to counsel and the witness.)

A. Yes, I would have. Under the same set of circumstances, I would have. You're exactly correct.

Q. Have you had occasion to arrest any group of white students under the same or similar circumstances?

A. No, I haven't.

Q. You haven't had any in your thirteen and a half years?

A. No, I haven't.

Q. I ask you again—I ask you this, sir: do you remember the recent cancellation of Nixon's speech in the City of Columbia?

A. Recent what?

Q. The cancellation of Nixon's speech, Vice-President Nixon's speech, Vice-President Nixon was running for President and he had a speech cancelled for the State House grounds here last fall, I believe?

A. I don't remember the cancellation but I remember when he spoke.

Q. You remember that?

A. I don't remember when it was cancelled but I remember when he spoke.

Q. It was postponed, I believe, from one time to another, is that right?

A. I don't recall that. I remember when he spoke here.

[fol. 64]. Q. Do you have any knowledge of whether or not there was a demonstration on or about the State House grounds at that time?

Mr. Brandon: If Your Honor please, I object. I object to counsel referring to any other incident which could not possibly have been connected with this. I think that we are going far afield. He can probably dig up a dozen, if he wants to. It has no bearing on this. The exclusion of any testimony in regard to that could not possibly prejudice these defendants. When they take such action as they choose, they thereby elect to take the consequences and whether or not somebody else did it or whether or not somebody else was not arrested has no bearing on it.

Mr. Sampson: Your Honor, we withdraw the question.

Q. Mr. Beckham, can you, of your own personal knowledge, identify any of the particular eight defendants on trial here this morning?

A. I didn't get the chance to see them when they were up here. I don't know whether I could or not, except by their names on the arrest tickets that we have.

Q. Let me ask you this: Mr. Beckham, since you can't identify them, you don't know whether they did any of these acts alleged in this warrant or not, do you?

A. They were part of the over-all group that were up there—ye.

Q. Have you read this warrant?

A. I heard the warrant read to each and every one.

Q. I asked you: have you read this warrant?

A. No, I didn't read it but I heard it read to each one of the defendants.

[fol. 65] Q. When you heard it read this morning, that was the first time you had heard it read, is that right?

A. No, I had heard that warrant read before.

Q. When, sir?

A. When they were at the County Jail or the City Jail and in that instance, most of these, with the exception of probably one, were in that group. They were in the City Jail, with the exception of probably one.

Q. Mr. Beckman, this warrant says here that traffic was impeded. As to any of these eight defendants, can you identify any one of them as having impeded the traffic?

A. With the exception that they were in the over-all group that was down there.

Q. Then, I understand you to say that these eight, if they were apart from the group, they wouldn't be subject to the breach of the peace? Is that right?

A. I don't understand that.

Q. If these eight defendants were detached from the group, they would not be subject to the breach of the peace, the allegation of this warrant?

A. They were all together down there. They were all a part of the over-all group.

Q. The truth of the matter is that you cannot identify any of these eight defendants as to whether or not they were singing or not, can you?

A. No, I can't.

Q. It is also true that you cannot identify as to whether or not they were boisterous or not? Is that right?

A. They were a part of the over-all group that were singing and hollering.

Q. You heard these officers testify, didn't you?

A. Part of them, yes.

[fol. 66] Q. Part of them. From what you heard, state whether or not you recall, whether or not any of them said anything about any profanity having been spoken at all?

A. No, I didn't hear any profanity at all.

Q. Mr. Beckman, state whether or not you heard any of these defendants, these eight defendants, make any threats to any of the officers present?

A. I didn't hear any of them make any threats to any one.

Q. I understand that they did not act contemptuous at all, is that right?

A. With the exception of when they were given the

fifteen minutes to disperse and leave and they started singing and stomping their feet and shouting.

Q. I see. You don't recall any of the names of the songs, do you?

A. One was "I Shall Not Be Moved". I remember that and the Star Spangled Banner.

Q. Thank you.

(Witness excused.)

Whereupon, Mr. Coleman called Mr. A. C. SHORTER, JR., who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Coleman:

Q. Mr. Shorter, do you have a physical connection with any State Agency?

A. Yes, sir, I am Lieutenant with South Carolina Law Enforcement Division.

[fol. 67] Q. Did you have occasion on March the 2nd, last, to be in the vicinity of the State House, in the City of Columbia, on official business?

A. Yes, sir.

Q. Would you relate in your own words anything which might have happened, that you saw or heard or anything of your own knowledge that occurred there that day?

A. I went to the State House, it was a little before 12:00, and a group of young colored people came up. I don't know whether they were students or not. Some of them I know to be students. They came up on Gervais Street from towards Assembly. I was standing by Mr. Harry Walker, Legal Assistant to Governor Hollings, and—

Q. Just at this point, Mr. Shorter—were you working under the direction of Mr. Walker?

A. Yes, sir.

Q. Go ahead.

A. Mr. Walker told—

Mr. Perry: Your Honor, we have the same objection to that.

The Court: Objection sustained. No hearsay.

A. It was in the presence of these defendants and the co-defendants, Mr. Walker made certain statements. After

these statements were made, the students proceeded through the State House grounds, going around the State House to the Assembly Street side, turning left and starting towards Sumter Street.

Q. You are speaking of this group, this group of Negro students, approximately 200 in number, which was previously described here today?

A. This was the first part of approximately 200 group. This group consisted of approximately twenty-five or [fol. 68] thirty that was headed by another person, who is not a defendant here today. On the back side of the Capitol, I believe that's Pendleton Street, is the State Highway Department, the Wade Hampton Office Building and the Calhoun Office Building, all State office buildings, in addition to the State House being a State office building. The people apparently were disturbed and generally disrupted in these buildings; they were peering from windows. They were singing, this group, in columns of twos, and each sidewalk that crisscrosses through the State House grounds, they wanted to go through. Those sidewalks are very narrow and would not allow over two people, walking side by side, to get through. This group of approximately twenty-five or thirty wanted to walk through there in columns of twos. I asked them to move on. They were very belligerent about it but did proceed to move on down the main sidewalk to the Sumter Street sidewalk and down to the Gervais Street sidewalk and back to the horseshoe. They were singing, chanting, shouting, all of this time, and when they got there, they started back to the State House grounds again in the same boisterous manner and I arrested the first group. Contrary to what was said, all of them were not marched to the Jail, some of them were carried in automobiles. This particular group was carried in an automobile.

Q. Mr. Shorter, were you in the vicinity of the horseshoe at all?

A. Yes, sir.

Q. What time did you first make your appearance there?

A. I was there when this group arrived.

[fol. 69] Q. With relations to the area of the horseshoe, what was the appearance of the horseshoe as to persons within that horseshoe?

A. When this group first arrived, there weren't too many bystanders, only the students stretched out down Gervais Street. However, the longer that they stayed and paraded around, the larger the number of bystanders got, until approximately two, or three or four hundred—I don't know how many bystanders were there.

Q. How long after you first arrived did these students march unmolested?

A. Forty-five minutes to an hour, I would say. I didn't time them.

Q. After this forty-five minutes to an hour period, what was the appearance of any person who might have been in the horseshoe then? What were the number of people out there, so far as you were concerned?

A. In addition to the students and the police officers, I'd say there were two, three or four hundred bystanders that would come by and we would immediately tell them to move on, which most of them did.

Q. Was the street around the horseshoe, the sidewalks around the horseshoe, were they free for traffic?

A. The horseshoe, of course, was blocked. At times, when the students would come through, I personally told them to not block the street and the sidewalks and the horseshoe.

Q. Did you give any personal instructions to any of the students to disperse?

A. I did not give any personal instructions to them to disperse.

Q. Were any official orders to disperse given to these marchers, to these groups?

[fol. 70] A. Not in my presence, no, sir.

The Court: We will now recess for lunch. Return here at 2:30 o'clock.

(Afternoon session.)

(Court reconvened at 2:30 o'clock.)

The Court: Does the State wish to put up any more witnesses?

Mr. Jenkins: If Your Honor please, I believe the last witness put up by the State before lunch has not been cross examined by the defense.

The Court: That's correct.

Mr. SHORTER resumed the witness stand and testified further as follows:

Cross examination.

By Mr. Jenkins:

Q. Mr. Shorter, I'm not quite certain I recall the detail of your testimony this morning, however, I do believe that you testified that you arrested one group, didn't you?

A. I arrested several. I said I arrested the first group.

Q. You arrested the first group that was arrested on that day?

A. That's correct.

Q. Now, in what area of the State House grounds were you when the first group was arrested?

A. On the front of the State House, in front of the main steps of the State House.

Q. Now, were the other groups in this vicinity when you arrested this group?

A. This particular group I do not remember.

Q. You testified this morning, I believe on direct examination, that the students that you arrested were singing. [Vol. 71] A. That's correct.

Q. Will you state to the Court whether they were singing prior to the arrest or whether they began singing after your arrest?

A. Prior to and afterwards.

Q. How long prior to the arrest, do you recall, did the singing begin?

A. I don't remember exactly. I'd say it had been quite some time.

Q. Was that the first group, all of the group that you arrested?

A. All of them that I arrested.

Q. So, it is your testimony then that these persons you arrested that day were in the front of the State House grounds, singing, prior to the arrest of any of them?

A. They were on the State House grounds in front of the main steps to the State House.

Q. Is it your testimony that there was general singing among the whole group prior to the arrest of any of them?

A. That is correct.

Q. I believe you testified—correction, please. Mr. Shorter, I'm certain you heard the testimony of Chief Campbell and other witnesses this morning.

A. I heard part of the testimony.

Q. Did you hear testimony from these witnesses that the persons arrested on March the 2nd had been given, in effect, fifteen minutes in which to get off of the State House grounds?

A. You'll have to ask them what they said.

Q. I'm asking you whether you heard some testimony? [fol. 72] A. I heard part of it. I don't recall that particular part.

Q. Did you hear them testify as to that?

A. I said I did not remember that particular part of it.

Q. Do you know whether or not persons arrested on March the 2nd had been, in effect, given fifteen minutes to get off of the State House grounds?

A. Do you want hearsay testimony?

Q. I'm asking you whether you know of any such limit of time?

A. You want me to tell you what I've been told?

Mr. Jenkins: If Your Honor please, we request that the witness be instructed to answer the question.

The Court: Answer the question.

A. Yes.

Q. The testimony of the witness for the State this morning, from each of them, with the exception of yourself, was to the effect that there was no singing prior to these persons, who are now defendants, being given fifteen minutes, or something to that effect, to leave the State House grounds. Now, would you testify to that singing?

A. I do not remember such testimony.

Q. Do you recall whether or not there was any singing on the part of the groups which you arrested, prior to their being advised that they had fifteen minutes in which to get off the grounds?

A. As I have testified to previously, I do not know the exact time that they were given, the time limit to leave.

therefore, I cannot say whether or not they were singing prior to their instructions to leave or not.

[fol. 73] Q. The eight defendants, who are on trial today, can you identify them or either of them as being in either groups that you arrested?

A. I can identify those as part of the over-all group that was arrested at that particular time.

Q. Can you identify any of the eight on trial today as participating in any of these specific acts alleged in the warrant signed by Chief Campbell?

A. I can identify them as part of the groups, all of which were singing and causing general disturbance at the State House.

Q. What do you base your identification of these eight defendants on or either of them?

A. All of them were arrested and booked. They have answered to their names as called and, if they are telling the truth, they are eight of the persons that were arrested that day.

Q. Other than that, you were not able to identify either of these defendants?

A. I doubt seriously that I could pick them out of a crowd of three or four thousand people.

Q. Could you pick them out of a crowd of several hundred that were on the grounds?

A. I doubt seriously—no.

Q. Mr. Shorter, did you have any conversation with any of the persons who were arrested on March the 2nd?

A. None other than to tell them that they were arrested, to tell them that they could not go double file, in groups of thirties, on the narrow sidewalks that cross the State House, that it would block traffic and it would block the sidewalks, and we could not have that.

Q. Did you discuss with them their purpose for being on the grounds that day?

[fol. 74] A. I was present when the defendants had that discussed with them. The defendants' avowed purpose there was to demonstrate, to walk around and around and around the State House.

Q. Now, when you said the defendants, did you mean these eight?

A. These eight plus their co-defendants.

Q. Are you saying to the Court that you heard more than 180 persons say to you that their purpose for being on the grounds was as you have stated?

A. Each group had a leader. The leader was talked to and the rest concurred by going along with their leader.

Q. Did you directly talk with either of these groups?

A. I did not directly discuss their purpose for being there.

Q. I'm sorry—

A. I did not directly discuss their purpose for being there.

Q. Now, Mr. Shorter, I want to ask you another question. The groups that you arrested, stated to the Court how many times those persons marched around the State House?

A. I don't remember. Several, probably. I didn't count them.

Q. It's a fact that you didn't know whether they marched around one time or two times?

A. They had been there ample time to march around a dozen times.

Q. Your answer is not in response to the question.

A. Would you repeat your question?

Mr. Jenkins: We move, Your Honor, that the witness' answer to the previous question be stricken on the grounds that it was not responsive to the question.

[fol. 75] The Court: On the basis of what?

Mr. Jenkins: The answer was not responsive to the question that I directed to the witness.

Mr. Coleman: Strike it. It makes no difference.

The Court: Go ahead and strike it.

Q. The question was that you do not know, as a matter of fact, whether these persons that you arrested had been around the State House one time, two times or any number of times?

A. I know, to my own knowledge, that they went around at least once; two, three, four or five, I do not know.

Q. No further questions.

(Witness excused.)

Mr. Coleman: The State has no further witnesses, Your Honor.

DEFENDANTS' MOTIONS FOR DISMISSAL OF CASES, ETC.
AND DENIAL THEREOF

Mr. Perry: May it please the Court, at this time, the defendants move for a dismissal of the cases against them upon the ground that the evidence of the State has completely failed to establish the *corpus delicti* and, since it has not been shown that any crime has been committed, the defendants are entitled to have the cases pending against them dismissed.

With Your Honor's permission, I will now make a second motion and I will make one argument as to both motions. At this time, the defendants move for a dismissal of the cases pending against them on the ground that the State has completely failed to prove by competent evidence a *prima facie* case. Now, I shall be glad to make a short argument, off the record, unless the State has some preference in that regard.

(Arguments followed.)

The Court: The motion is denied.
[fol. 76] Mr. Perry: One further motion. At this time the defendants move that the cases against them be dismissed on the ground that the evidence shows that by arresting and prosecuting the defendants, the officers of the State of South Carolina and of the City of Columbia were using the police power of the State of South Carolina for the purpose of depriving these defendants of rights secured to them under the First and Fourteenth Amendments of the United States Constitution. I particularly make reference to freedom of assembly and freedom of speech. I shall make no argument on that.

The Court: The motion is denied.

Mr. Perry: May it please the Court, the defendants would like not to offer any evidence. We will have no testimony. At this time, I would like to renew all motions for dis-

missal, which were made at the conclusion of the State's case and I would ask that it be included in the record verbatim, as if I were repeating them verbatim at this time.

The Court: The motions are denied.

Mr. Perry: Nothing further from the defendants.

Mr. Coleman: Nothing further from the State.

The Court: The Court before reaching the verdict will take a ten minute recess.

(Court recessed.)

(Court reconvened.)

The Court: I want to caution everyone within the courtroom here that when we began this morning I made the first rule that there would be no pictures taken. I have information that there is a camera in here now and I want to caution you that you will be held in contempt of court if any pictures are taken.

Will the defendants please come before the Bench?

(Defendants arraigned before the Court.)

[fol. 77] The Court: Would the attorneys like to say anything before the Court renders its verdict?

Mr. Perry: Your Honor, nothing except the motions for dismissal which we have made. I understand that Your Honor has denied them. However, you have not yet made your finding as to whether or not you find them guilty or not guilty. We will reserve anything we have to say until after you have made your finding.

SENTENCE

The Court: It's a very hard problem that we are faced with, all of us, white people and Negroes also. When I talk to these eight and look upon the faces of the young, actually they are children, some of them, and perhaps counsel doesn't realize—I imagine you do—that I've been in office only thirty days. Prior to that, I worked with young people, devoted my life to helping young people, as the Juvenile Officer of this County. I have about as many Negro friends

as I have white friends and I'm proud of it. But there is one thing that disturbs me more than anything else, that this fight over segregation or integration has nothing to do with children because we are the ones, included, we adults are the ones that have caused this problem. I don't think it's up to me to tell my little baby girl, five years old, to fight my battles for me. I don't think it's up to the people; I don't think the decent people expect it, expect children to fight our battles. My battle, your battle, our adults' battles, whites, Negroes, all of us.

It's been many a day that I have taken children home with me, founding children. I took off my own shoes in my own home and gave them to a boy to go to school.

To me the greatest asset that we have or shall ever have is our youth.

(The Court then questioned each defendant individually as to his age, home address, school, etc.)

[fol. 78] To each of you, James Edwards, Jr., Alvester Pate, Jr., Pinckney Mosley, Melvin Brown, Jr., Harold Eugene Nimmons, Willie Boykin Jones, William Perkins, Bill Alvin Sullivan, it is the finding of the Court that you are guilty without question. No defense was put up in your behalf and the sentence of the Court is that each of you pay a fine of \$100.00 or 30 days in the County Jail. However, I'm going to do something here, which the law forbids me to do, but I make it public to each one of you minors—how many of you are 21? (Only one, James Edwards, Jr., raised his hand.) To each one of you minors, I'm going to suspend half of that on the payment of a fine of \$50.00.

There is something else that has come to my attention during the hearing of this testimony today. Getting back to we adults using children and minors to fight our battles, adults' battles, Negroes and whites, those who would use, misdirect, lead a child into a dangerous situation and yes, it's dangerous. What happened yesterday? A Negro was stabbed right up here, one block from where we are, by a man, a cowardly man that he was. It is a dangerous situation. I would pass out if I knew my child was put in a

position that some violence could happen. We have fanatics in both races, extremists.

From the evidence that has come out to me today, and the testimony, there are indications from that sworn testimony of violations of another State law, contributing to the delinquency of a minor. It is Section 16-556.1, Code of Laws of South Carolina, 1960 Cumulative Supplement. "It shall be unlawful for any person over twenty-one years of age to knowingly and wilfully encourage, aid, cause or to do any act which would cause or influence a minor to (1) violate any law or municipal ordinance; become and be an [fol. 79] incorrigible, ungovernable or habitual disobedient beyond the control of his parents, guardian or custodian or lawful authority; become a habitual truant without just cause and without the consent of his parents, guardian or other custodian; repeatedly desert his home or place; engage in any occupation which is in violation of the law; associate with immoral or vicious persons; frequent any place, the existence of which is in violation of the law; habitual use of obscene or profane language; beg or solicit alms in any public place under any pretense or so deport himself as to wilfully injure and endanger his morals or health or health of others. Any person violating the provisions of Section 16-556.1 (which I have just read), shall upon conviction be fined not more than \$3,000.00 or imprisoned for not more than three years, or both, at the discretion of the Court."

Chief Beckham, of the Law Enforcement Division, hold that man under immediate arrest until I can issue a warrant charging him with contributing to the delinquency of a minor, which I will issue. Also, I want and request that the State Law Enforcement Division, the City Police and the Sheriff Department start an immediate investigation into this whole thing, as to who, what, when, where, why and how the adults have violated, in my opinion, this section of the law.

I do hope that each one of you, with all my heart, will not be placed in this position again or place others in this position.

Mr. Perry: May it please the Court, we have several more motions we would like to make.

The Court: The defendants may now take their seats.

Mr. Perry: May it please the Court, the defendants now, at this time, respectfully move for arrest of judgment or in the alternative, for a new trial upon all grounds pre-[fol. 80] viously noted in the several motions for dismissal. We urge that they be repeated in the record as fully as if I were repeating them verbatim here.

Mr. Coleman: The State opposes on the grounds set out in the previous argument.

Mr. Perry: We renew the three motions.

The Court: All motions denied.

Mr. Perry: The defendants, at this time, give verbal notice of appeal. We will tender written notice. We ask that the Court at this time set an appeal bond for deliverance.

The Court: The appeal bond for each one of the defendants will be \$100.00.

Mr. Perry: All right, sir. With reference to defendant, James Edwards, Jr., at this time, we ask that bond be set for this young man.

The Court: In this instance, it will be \$5,000.00.

Mr. Perry: Will you continue the defendants under the appearance bonds, which have previously been posted until we can handle the administrative problems necessary to the substitution of the appeal bonds?

The Court: When would that be? We will allow until Thursday morning at 10:00 o'clock, with the exception of the person who is 21 years old, with that one exception.

(Court adjourned.)

Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 81]

TRANSCRIPT OF TESTIMONY

Before Honorable Frank Powell, Magistrate, on Monday, March 13, 1961, Richland County Court House, Columbia, South Carolina.

APPEARANCES:

For the State: J. C. Coleman, Esq.

For the Defendants: Lincoln C. Jenkins, Jr., Esq., Matthew J. Perry, Esq.

The Court: I would like to announce the rules of the Court. There will be no photographs or pictures of any type taken within this courtroom during this hearing. Every one who wishes to attend may attend as long as there is a seat available. There will be no standing up around the walls, cluttering up or any outbursts whatsoever.

The State of South Carolina's court has before it a warrant charging the following persons for breach of the peace: George Cleveland Foster, James Jerome Kirton, Isaac Washington, Roland Johnnie Rhames, Joseph B. Bailey, Isaac Jerome Campbell, Davie Green, Charles Fulton Barr.

Are these persons present?

Mr. Jenkins: They are present, Your Honor.

The Court: Are they represented by an attorney?

Mr. Perry: They are, sir.

The Court: Will those persons, please, approach the Bench?

(Defendants arraigned before the Court.)

The Court: Are you the persons just named charged with breach of the peace in Columbia, South Carolina, Richland County, on March 2nd, 1961?

Defendants: We are (in unison), yes, sir.

The Court: Take your seats.

[fol. 82] Mr. Jenkins: At this time, if Your Honor pleases, we would like to state that these defendants plead Not Guilty.

The Court: Is the defense ready for trial?

Mr. Perry: We are ready.

The Court: Is the State ready for trial?

Mr. Coleman: The State is ready.

Whereupon, Mr. Coleman called Mr. IRVING G. McNAYR who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Coleman:

Q. Mr. McNayr, I believe you are the City Manager of the City of Columbia, South Carolina?

A. I am, yes, sir.

Q. As such City Manager, state whether or not the law enforcement agency of the City of Columbia, the Columbia City Police Department, is under your supervision?

A. The Police Department of the City of Columbia is under my direct supervision.

Q. State whether or not anything occurred of an unusual nature on last March 2nd, which required you to be in the vicinity of the State House grounds?

A. On March the 2nd, at about 10:45, I received a telephone call from Chief Campbell informing me that he had been informed that a meeting was being held at the Zion Baptist Church on Washington Street, and that, following that meeting, there would be a march and demonstration at the State House grounds.

Q. As a result of receiving that information, what did you do?

[fol. 83] A. I then asked Chief Campbell to pick me up at City Hall, to take me to the Zion Baptist Church, which he did.

Q. Where did you go from Zion Baptist Church?

A. From Zion Baptist Church, after we saw the Negro students beginning to leave the church and forming into groups of approximately—oh, fifteen to twenty, Chief Campbell then drove me to what is known commonly as the horseshoe at the State House grounds.

Q. I see. That is the area immediately in front of the front steps of the State House, where the monument stands?

A. Yes, sir.

Q. What time did you get there?

A. We got there at approximately 11:45—11:30 or 11:45.

Q. What did you observe at that place?

A. After about a five or ten minute wait, during which we observed that there were police officers, those from the City of Columbia, from the State of South Carolina Law Enforcement Division and some State Highway Patrol in that vicinity. We then observed the students, the Negro students marching up in groups, as I have described, up Gervais Street, moving East on Gervais Street toward the Capitol.

Q. Can you estimate the approximate number of the Negro students you observed?

A. I estimated at that time something around 200 Negro students.

Q. Did it appear to you that they were acting in a group or in concert, from the physical appearance of the students?

A. There was no question in my mind but that they were acting as a group and in concert.

[fol. 84] Q. Did you have any conversation with the students at that time?

A. Not at that time, no, sir.

Q. What did you do, with regard to the group, at that particular time?

A. I did nothing in regard to the group other than chat and stand around with Chief Campbell or other police officers and with Mr. Harry Walker of the Governor's Office.

Q. You were acting as an observer at that time?

A. Yes, I was.

Q. This was what time, again, please?

A. This was approximately 11:45.

Q. What course of action, if any, did the Negro students, to which you have just referred, take then?

A. The Negro group then formed along the sidewalk between Assembly Street and the horseshoe, on the sidewalk adjacent to the Capitol, and each group was met by Mr. Walker and received instructions from him.

Q. Did you hear the instructions given to the students?

A. Yes, I did.

Q. What was the nature of the instructions?

Mr. Perry: May it please the Court, we respectfully interpose an objection at this time to any statement made by other persons not a defendant on trial in this case on the ground that it would be violative of the hearsay rule.

Mr. Coleman: If Your Honor please, I have a particular purpose for getting this testimony in but this same objection was made last time when we tried a group under similar circumstances here and I would like to clarify one matter, so far as I am concerned and that is about the hearsay rule. If this question is answered by Mr. McNayr, [fol. 85] he is not giving information that was passed to him by a third party. The question was: were any instructions given these students, which you heard yourself. Should he testify, should he answer that question, he is not testifying to something which was related to him by a third person. He is testifying to something which he actually was there and heard so, unless there is some other objection, I think the question and answer are both permissible so far as the hearsay rule goes.

Mr. Perry: May it please the Court, as I understand the hearsay rule, I think the matters, about which Mr. Coleman has just addressed himself, are precisely the matters covered by the hearsay rule. He seeks from this witness testimony which would, of necessity, repeat words which were spoken by Mr. Walker to the individuals who formed the procession about which Mr. McNayr is testifying. Obviously, the best source of information, which would be available in that particular regard, would be the person who gave the instructions. To permit this witness to testify concerning verbal instructions which were given by someone else would deprive these defendants of the right to cross examine that person concerning the content and nature of the instructions and that is precisely what the rule against hearsay evidence is predicated upon. We, therefore, urge that the testimony, which is now sought to be elicited, would be violative of the hearsay rule.

Mr. Coleman: I have nothing further.

The Court: Objection sustained.

Q. Mr. McNayr, what course of action did the Negro students take after that, after you met them?

A. After the incident which I described, the Negro students were then allowed to walk through the State House [fol. 86] grounds in small groups. They proceeded to do that, many of them circling the Capitol Building, some few moving down the sidewalk towards Assembly Street. The great majority, however, circled through the State House grounds and then forming in a processional line on the sidewalk—I have my directions wrong this morning—I think West of the horseshoe area, along Gervais Street.

Q. How long approximately, if you can testify of your own knowledge, did this activity take?

A. Approximately three quarters of an hour.

Q. During that three quarters of an hour, did you observe whether or not there was any interference with the students during that three quarters of an hour?

A. I observed no interference. I believe many of the groups were accompanied by police officers, either from the City of Columbia or from SLED.

Q. Then, so far as you know, they were allowed to proceed for three quarters of an hour without any interference whatsoever?

A. Yes, they were.

Q. All right. After this period of time, what occurred?

A. During the period which they were walking through the State House Grounds, a crowd of people were gathering, both within the horseshoe area on the Capitol side of the street and also on the opposite side of Gervais, particularly at the entrance to Main Street, the sidewalk area adjacent to the Wade Hampton Hotel and I believe it's the Palmetto State Life Insurance Building on the other corner. I have estimated the crowd at somewhere around 300 or 350 people, other than the students. This was during [fol. 87] the lunch period and more and more people were proceeding from other State office buildings, I assumed, through the State House Grounds, also, those persons coming down to lunch in the downtown area would be gathering in the crowd.

Q. I believe, Mr. McNayr, there are sidewalks on each side of the horseshoe?

A. Yes, there are.

Q. I believe, also, there are lanes for vehicular traffic on each side of the monument on each side of the horseshoe area?

A. Yes, sir, there are.

Q. These people, whom you have testified had just begun to gather within this area, where were they with relation to the sidewalks and the streets for vehicular traffic?

A. Many of them were gathering on the sidewalks, adjacent to these sidewalks, and into the what would normally be the traveled way for cars parking within that horseshoe area.

Q. So far as it appeared to you that it might or might not have any effect on the pedestrian and vehicular traffic along those sidewalks and along those vehicular lanes, this crowd or number of people, who had gathered, other than the students, did they have any effect on that pedestrian and vehicular traffic, so far as you could tell?

A. Yes, they did. Chief Campbell had to place an officer in the intersection of Gervais and Main to direct traffic because a group like that normally would slow down traffic anyway, going on Gervais and Main, and, in addition to that, we had on numerous occasions to order the people [fol. 88] to move out of the pedestrian walkways so that groups could get through.

Q. Did this crowd gather all at once or did it increase over the period of three quarters of an hour?

A. It increased all during that period.

Q. Did it appear to you that it was increasing and would increase further at that time?

A. Yes, it did.

Q. All right. What action then, if any, did you take?

A. When the groups, after they came through the State Capitol Grounds and started to form on the sidewalk West of the horseshoe area, I then got in touch with the recognized leader of the group, David Carter, who was in that immediate vicinity and told him that because of the gathering of the crowd, because of the fact that the sidewalks were being blocked, because there was always in a group like that a chance for violence and rioting to occur, that I felt that the students must be dispersed and asked him to

request each group to disperse and to go in orderly fashion back to their cars or their campus in small groups.

Q. Do you know of your own personal knowledge whether or not David Carter did relay this information to the various groups?

A. Yes, I do. I was in his presence, oh, for fifteen minutes. I failed to add in my previous testimony that I told him that I felt that they should have fifteen minutes in which to disperse.

Mr. Perry: May it please the Court, I now offer a belated objection to any conversation with a person not on trial in this proceeding. Now, I do recognize that the witness has identified the person, whom he had this conversation with, as the recognized leader of the group. We [fol. 89] hasten to add that this person is not today on trial and any conversation, which Mr. McNayr had with him, is irrelevant to the proceeding against the persons on trial this morning. We, therefore, interpose an objection on the grounds of irrelevancy of that testimony and we move that all testimony with reference to the subject be stricken from the record.

Mr. Coleman: If Your Honor please, we are dealing here with a large crowd of people. It is manifestly impossible for Mr. McNayr or any one else, even if he had done so, to remember giving any instructions to the particular defendants on trial here today. He has testified that the entire body of students, consisting of 200, maybe a little more or a little less, were acting in concert as a group. These defendants were amongst that group. He has testified that this David Carter appeared to him and was the recognized leader of that group. Any instructions, any information which was conveyed by Mr. McNayr could not possibly have been conveyed individually to each of the 200 people there. As far as it being relevant, I should think it's probably the most relevant point in the case. The students were allowed to demonstrate, to march for three quarters of an hour. Mr. McNayr has testified that they were allowed to do so entirely unmolested. Nobody bothered them. Crowds began to gather, apparently attracted by these demonstrations, streets were blocked, sidewalks were

blocked, it was up to him to give some official instructions to this group. He couldn't go to each one. He gave it to the recognized leader. The leader gave it to the students in his presence. He is not testifying to what anybody told him. We can't show that and it's impossible to ever deal [fol. 90] in that manner with any crowd of people.

Mr. Perry: By way of reply, may I say, first of all, that there is no evidence that the eight defendants on trial today were involved in the procession of individuals on March the 2nd, unless Your Honor considers the fact that they later made bond, while under arrest at the City or County jail, as evidence of their complicity in the activities of the day previous. I respectfully urge that the fact that they later made bond does not show that they engaged in any procession. That being the case, the statement made by Mr. Coleman in that particular respect that the proffered testimony of Mr. McNayr at this time would tend to show that these defendants received a communication is not borne out by the logical sequence of the events as the evidence now relates them to be. We respectfully show that the testimony now sought to be elicited is irrelevant because it constitutes a conversation which occurred between Mr. McNayr and the individual whom he identified as the recognized leader of the group. It is not shown that the conversation was with either of these defendants and we, therefore, respectfully submit that his testimony is irrelevant to the issues of this case today.

Mr. Coleman: If Your Honor please, Mr. McNayr has not testified that he and David Carter or anyone else gave instructions to these individual defendants. The activities of this entire group is the very body of the crime with which they are charged and he is testifying as to official instructions which were given to the large group, not the individual defendants.

[fol. 91] The Court: Objection overruled. The witness will answer the question.

Q. Mr. McNayr, will you please proceed with your testimony. You had just testified that you had given certain instructions to David Carter and David Carter had relayed that information to various groups of students in your presence?

A. Yes. I stayed with David. Each group was brought up and he talked to them. He did not give the instructions as I gave them to him. I gave them to him in much the same manner as I am speaking at the moment—

Mr. Perry: Now, may it please the Court, we respectfully object to testimony concerning what David Carter may or may not have stated to other persons. We want it included in the objection on the ground that that is in violation of the rule of hearsay. Now, my previous objection was different. My previous objection was to any conversation between Mr. McNayr and David Carter. Of course, Your Honor has overruled that objection but now the objection is to the instructions, which David Carter may or may not have communicated to the other individuals. Now, Your Honor has previously ruled out testimony concerning what another State official communicated to the defendants by way of instructions. I respectfully submit that any instructions which David Carter may have communicated would be subject to the same objection, which we interposed previously, on the ground that it violates the hearsay rule.

Mr. Coleman: If Your Honor please, since the question is not very important, I'll withdraw it.

[fol. 92] Q. Mr. McNayr, after your conversation with David Carter, would you describe the activities of the Negro students, after you approached them yourself, and with David Carter?

A. There developed a singing, chanting, shouting response, such as one would get in a religious atmosphere; loud singing, stomping and so on, on the part of each group of students and the students as a whole.

Q. Was this audible for some distance?

A. I would guess it was audible all throughout the area.

Mr. Perry: I object to that testimony. It is speculative.

A. It is.

Q. Did the students disperse after the chanting, which you have just described?

A. No, they did not.

Q. What was the size of the crowd of people in the horse-shoe area, Mr. McNayr, at that time, with relation to what it had been when you first got there?

A. It had grown from a relatively small group of probably 30 to 35 people to something in the neighborhood of a 100 to 150 within the horseshoe area.

Q. What effect, if any, did this gathering of persons in or about the horseshoe appear to you to have on traffic, say on Gervais Street?

A. It was slowing up traffic on Gervais Street. Any loud singing, stomping of the feet and so on, such as occurred, would tend, of course, to slow down any traffic.

Mr. Perry: Objection. That testimony is speculative.

A. This is not speculative. This I observed.

[fol. 93] Mr. Coleman: The witness has testified as to what he saw and it is not speculative.

Mr. Perry: It is not what he is testifying to in response to Mr. Coleman's question as to what effect it had on traffic. If the witness is being responsive to Mr. Coleman, the witness is testifying as to the effect that the singing had on moving traffic.

Mr. Coleman: The question didn't have anything to do with the singing. The question was what effect did the gathering of persons in the horseshoe appear to have on traffic.

Mr. Perry: There again, Your Honor, I'm sure, of course, you are familiar with the area described as the horseshoe in front of the State House Grounds, and the testimony, as I understand it, is that the groups of persons were assembled, at least in part, within the horseshoe area. There is no testimony that these persons extended out into the intersection of Main and Gervais, therefore, testimony on the part of Mr. McNayr as to the effect of an assemblage within the horseshoe area upon traffic on Gervais Street would of necessity be speculative. It involved the giving of a conclusion on the part of this witness, which I feel the Court, in the interest of the expeditious and impartial administration of justice, should not permit. I think the answers, which the witness is giving to prove the State's position, they have sought to prove it, except that we deny that it constitutes a breach of peace. They can prove their case without going into speculative testimony or testimony which tends to represent the conclusions of the witness.

Q. Mr. McNayr, have you observed from time to time [fol. 94] Mr. Coleman: Pardon me, did your objection relate to the whole testimony?

The Court: As the Court understands your objection, it is just to the effect what Mr. McNayr saw on the traffic that was moving on Gervais Street.

Mr. Perry: As I understood the question, that was my objection.

The Court: Objection sustained.

Q. Mr. McNayr, are you familiar with and have you observed from time to time the normal flow of traffic on Gervais Street?

A. Yes, I have.

Q. Did you observe the traffic on Gervais Street at the time you just spoke of when the crowd of persons had gathered in the horseshoe?

A. Yes, sir.

Q. Was it normal?

A. The traffic was very considerably slowed down. There was a large volume of traffic but it had slowed down considerably.

Q. State whether or not there was any congestion of traffic?

A. Yes, there was congestion.

Q. All right, sir. What official action, if any, did you take at that time, Mr. McNayr, after the failure of the students, as you have testified to, to disperse?

A. I then informed Chief Campbell of my conversations with David Carter and, after waiting the fifteen minute period, he proceeded to arrest all of the Negro students in the State House area, both on the sidewalk and those still within the State House Grounds. He was aided during this period, of course, by the South Carolina Law Enforcement Division officers.

[fol. 95] The Court: Court will take a 15 minute recess.

(Court reconvened.)

Cross examination.

By Mr. Perry:

Q. Mr. McNayr, I believe that you have stated that you are in charge of the police activities in the City of Columbia by virtue of your being City Manager?

A. Yes, I am.

Q. On March the 2nd, how many officers of the Columbia City Police Department did you have assembled in the area around the State House Grounds?

A. I think you would have to re-word your question: how many officers were assembled there. I would guess somewhere between twenty and thirty.

Q. I see. May I ask, sir, were they all congregated in the area which you describe as the horseshoe or were they all scattered around on other parts of the State House property?

A. They were not immediately assembled there in the horseshoe but they were largely within the horseshoe area, yes.

Q. I see. Sir, as you observed the various groups of Negro students approaching the State House Grounds, I believe you have stated that they approached in groups, which were separated from each other but obviously moving in concert?

A. Yes.

Q. Will you describe the size of the various groups?

A. I would say they varied in size, anywhere from fifteen to thirty.

Q. I see. Now, those various groups, which you have described, were walking, I believe you said, upon the sidewalks, first of all, adjacent to the State House property [fol. 96] and later they entered the State House Grounds, after having stopped and received some instructions from a State Government official?

A. That's correct.

Q. In what manner were they proceeding? Were they, for instance, walking single file or walking two abreast or would you describe the manner in which they were proceeding?

A. When they moved to the State House originally or after receiving instructions?

Q. May I ask you, sir, to touch upon how they were walking originally and how they later walked?

A. Originally, they were walking in pairs, two abreast. If I recall correctly, they continued to walk through the Grounds two abreast.

Q. I see. Now, as I understand, the sidewalks that are placed on the State House Grounds are wide enough for more than two persons to walk upon them, are they not?

A. Yes, they are.

Q. Was it possible for any persons, other than the students engaged in this procession, to walk upon the sidewalks at the same time?

A. It was possible but, I would say, difficult because I am not thoroughly familiar with all of the walks of the State House Grounds and they may well have broken into single file in order to let others pass.

Q. Now, sir, as you observed the procession of students walking, as you say, in separate groups, in columns of twos, to paraphrase what you have said, will you describe how far apart each two students were walking behind each other? My question really is, were they walking as far [fol. 97] apart as arm's length or were they walking farther apart than that?

A. I would say at arm length or closer.

Q. Arm's length or closer. Now, sir, you were present and at least in command of the Columbia City Police on this occasion, did you receive any complaint from any person who complained of not having been able to use the sidewalks or to pass?

A. Yes, I did.

Q. I see. Who was that person?

A. There were a number of persons, I can't identify them as such, they were mostly white ladies coming through the State House Grounds from apparently a State Office Building on the other side.

Q. Now, may I ask you to comment, sir, upon the nature of the complaints that were made to you?

A. The nature generally was very general, to the effect that they didn't think this sort of thing should be allowed.

that they were having difficulty passing through the State House Grounds going to their accustomed eating places.

Q. I see, but they obviously were successful in passing through the State House Grounds. They were not prohibited by any conduct.

A. They were successful in getting as far as me. I don't know what happened to them.

Q. Were the persons engaged in the procession well dressed and generally well demeaned?

A. Yes, they were.

Q. Except for the fact that at one point, about which you have already testified concerning the fact that they started singing, except for the singing itself, was their conduct generally well behaved?

[fol. 98] A. I also testified that they were not only singing but stamping their feet, shouting, responding to a harangue.

Q. Now, at this time—

A. I would not in answer to your question call them well behaved at that stage.

Q. Prior to that time, you will agree that they were well behaved?

A. Yes.

Q. May I ask you, sir, when in point of time did you, acting in your official capacity, either yourself or your officers place the persons engaged in the procession under arrest or directed that they be placed under arrest?

A. Which do you want to know? Do you want to know when I gave the instructions that they be dispersed within fifteen minutes or when they were actually placed under arrest?

Q. My question had to do with when were they placed under arrest?

A. I can answer this one exactly—at exactly a quarter past one.

Q. Now, at the time the persons were placed under arrest, were they singing?

A. Yes. I think I could add, singing and stomping their feet and yelling and shouting.

Q. Now, of course, you do not know whether any of these defendants were so engaged, do you?

A. I can identify a few of them by sight. I don't know

their names. There were at least three or four of them I could place right there at the scene.

Q. What song or songs were they singing?

[fol. 99] A. As I testified at the last hearing, there was so much noise and shouting and singing going on that at first I couldn't identify. I think you informed me and I do recollect that they were singing the Star Spangled Banner; then they had one of their own apparently, the hymn sort of thing, "We will not go along" or something of that nature.

Q. So, they were singing the Star Spangled Banner in what you would describe as a loud tone?

A. Loud and boisterous.

Q. Now, sir, you did not say boisterous before. Let's consider—what do you mean by boisterous?

A. Again, loud, flamboyant, all of those synonyms describing boisterousness; which you have made.

Q. I'm afraid that doesn't describe the term; perhaps you did not use the term boisterous. I understand that you did say they were loud, but do I understand that you are accusing them of singing the Star Spangled Banner in any manner other than a respectful one?

A. Yes, I am, and I meant to imply that, actually. They were shouting; they were stomping their feet; they were raising their hands, in a manner which I would describe as boisterous.

Q. Were they disrespectful to you?

A. Yes, very definitely.

Q. Disrespectful in what manner, sir?

A. In the manner of not following any orderly procedure, continuing to shout and yell. They had been aroused to this pitch. You did not allow me to give the testimony of the harangue which raised them to this point but they were aroused to a fever pitch causing this boisterousness, this singing and stomping.

[fol. 100] Q. Did any of them use any profanity?

A. No, I heard no profanity.

Q. Did any of them act contemptuous towards you or towards any bystanders?

A. Only in the manner of shouting and singing as I have described; no leering or anything like that.

Q. The singing of the Star Spangled Banner would not express contempt towards you, would it?

A. It was in contempt of my request, yes.

Q. May I ask you, Mr. McNayr, why did you direct the arrest of the defendants or the persons involved in the procession?

A. Because, in my judgment, the size of the crowd had reached such proportions that I felt that it was possible that we might have a riot or other violence in the area.

Q. Now, what led you to believe that there might be a riot?

A. Simply by the size of the crowd, by the activities of the students, the rousing of the interest of those persons in the crowd to a point where they might well have rioted.

Q. Did you observe any persons among the on-lookers who tried to do violence or to in any manner interfere with the persons engaged in the procession?

A. I saw no actual violence. There were in the crowd, however, types of people whom we recognize were willing, ready and able and eager to create violence.

Q. What, if anything, did you do as the Commander-in-Chief of the Columbia Police on this occasion to interfere with those potential trouble makers, other than ordering the arrest of the persons engaged in the procession?

[fol. 101] A. That was the principal thing to do, to get rid of the source of the potential trouble.

Q. You have just described the persons in the procession as being generally well behaved up until they started singing?

A. Yes.

Q. I believe that you have not sought to testify that any of them were of a violent attitude. You said some were boisterous but you have not said they were violent.

A. That's correct.

Q. You have not said that any of them were potentially trouble makers or of a violent attitude?

A. I don't believe I've said that. I don't recognize them as potential trouble makers other than the fact that they--

Q. You never arrested the recognized persons among the on-lookers who were potential trouble makers?

A. No.

Q. And yet you did nothing about them?

A. There was nothing that I could do. They were not developing any activity which could have led to their arrest, but the students were.

Q. But you recognized that their mere presence led you, if I'm quoting you correctly, to in your judgment to feel that the situation had gone far enough?

A. That is correct.

Mr. Coleman: If Your Honor please, counsel said that Mr. McNayr testified that their mere presence created this thing and I'm quite sure if the testimony is read back, it was not their presence but that combined with the activity [fol. 102] ties. I'm not trying to testify as to what the witness said but he is misquoting him there.

Mr. Perry: I did not intend to alter any of Mr. McNayr's testimony. I do apologize.

The Court: Objection sustained.

Mr. Perry: Thank you, sir. No further questions.

(Witness excused.)

Whereupon, Mr. Coleman called Chief L. J. CAMPBELL who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Coleman:

Q. Your full name is L. J. Campbell?

A. That's right.

Q. Are you the Chief of Police of the City of Columbia?

A. I am.

Q. Did anything occur of an unusual nature on last March the 2nd which caused you to be in the vicinity of the horseshoe of the State House Grounds?

A. Yes. I had information that there would be a march on the State House Grounds on the morning of March the 2nd.

Q. As a result of that information, did you go to the State House Grounds?

A. I did.

Q. What time did you arrive there?

A. I would say about 11:15 or 11:30, somewhere around there.

Q. Where exactly or in what immediate vicinity did you station yourself?

[fol. 103] A. At the intersection of the horseshoe and Gervais and Main.

Q. Would you state what you observed at that time?

A. When I arrived, I observed a group of students coming East on Gervais in the direction of the State House from Gadsden Street.

Q. Would you describe the appearance of this group of students?

A. Well, groups of from fifteen to twenty and there were several groups travelling in the direction of the State House.

Q. Were they Negro students?

A. They were.

Q. How close together, if you can tell us, Chief Campbell, were these groups?

A. I believe they were a third of a block apart or something like that.

Q. Can you estimate the size of the entire group of students?

A. I thought there was in the neighborhood of 200, in my opinion.

Q. What did the students do?

A. They marched on to the corner of the horseshoe at Gervais and Main, on the West side. They were approached there by Mr. Walker, the legal assistant to the Governor, and myself and Mr. McNayr, and I believe Mr. Shorter was there; I don't remember whether Mr. Beckman was there or not. Mr. Shorter was, I know.

Q. Did either of the students or anyone acting on their behalf with them make any statement in your presence at that time?

[fol. 104] A. Students? The only statement that was made at that time was that they were asked by Mr. Walker, if the student who was leading, was he in charge of their group.

Q. Do you remember who that student was?

A. No.

Q. All right. Describe the activity, if any, which the students engaged in thereafter?

A. Well, they proceeded to go through the State House Grounds and they were instructed that they had a right to go through the State House Grounds but it must be peaceful.

Q. How long did this activity continue?

A. I would say for forty-five minutes or longer, maybe forty-five minutes.

Q. Chief Campbell, when you first arrived at the horseshoe, were there any other people in and about the horseshoe except the students?

A. When we first arrived, the students had not arrived.

Q. Were there any other people in or about the horseshoe at that time?

A. There were some police officers in and around the horseshoe area and a few civilians.

Q. What do you mean by a few?

A. I'd say fifteen or twenty civilians.

Q. How long did this procedure or this marching or walking around the State House Grounds continue?

A. I'd say approximately forty-five minutes or longer.

Q. Did you remain in the horseshoe during this period of time?

A. I did.

[fol. 105] Q. Describe what you observed as to whether or not there were any people in the horseshoe after the forty-five-minute period?

A. A large crowd had assembled.

Q. What were they doing?

A. Mingling around, talking, congesting the intersection.

Q. With relation to the sidewalks on either side of the horseshoe, the lanes for vehicular traffic, where was this crowd of people?

A. Of course, they were crossing back and forth on Gervais Street, on the sidewalks, on the horseshoe and all around the intersection.

Q. State whether or not this crowd appeared to you to be impeding traffic?

A. They did. We placed a man at the intersection to handle motor vehicle and pedestrian traffic.

Q. Were any of the Negro students in or about the horseshoe at this time?

A. They would cross the horseshoe from the West to the East and from the East to the West on the sidewalks.

Q. Do I understand you to say that they were in a process of continual movements in and about the State House Grounds, including the horseshoe?

A. That's correct.

Q. All right, sir. After the forty five minute period had expired, what action, if any, did you take?

A. Mr. McNayr instructed David Carter, who we considered the leader, whom we have dealt with for a period of a year, that the crowd was gathering and we would like for them to disperse within fifteen minutes.

[fol. 106] Q. Did they disperse at the end of the fifteen minutes?

A. They did not.

Q. What action, if any, did you then take?

A. We arrested them at 1:15.

Q. Chief Campbell, how long have you been a police officer?

A. Thirty-one years.

Q. All of that time in the City of Columbia?

A. Yes, sir.

Q. State whether or not the presence of these students, that you have testified to, the presence of the increased crowd of on-lookers, as you have testified, had any effect on any official action that you took there that day?

A. Yes, it did. When a large group of people gather on an occasion of that kind, you never know what's in the mind of people so I felt, for the safety of everybody concerned, that the demonstration should be discontinued.

Q. Was this the reason for your participation in the arrest of these students?

A. That's correct.

Cross examination.

By Mr. Jenkins:

Q. Chief Campbell, I believe your testimony is that the persons on that day were participating in a so-called demonstration in walking groups, is that right?

A. That's correct.

Q. You testified as to the size of the individual groups?

A. I'd say they ran from fifteen to twenty normally. At times it was larger groups than that. Now, on the [fol. 107] State House Grounds, I think probably two groups might get together, you know, in shuffling around. I would say there were larger groups at times.

Q. I believe you stated that the groups were approximately one-third of a block apart but walking East on Gervais Street towards the State House Grounds?

A. I would say approximately that.

Q. You were present, I believe, at the horseshoe when the groups were stopped, the individual groups?

A. That's right.

Q. Now, when these groups were stopped, did that tend to make the second group move closer to the first group?

A. It did.

Q. And perhaps lose its identity as a separate group from the first group, is that correct?

A. That's correct.

Q. That was after the group in front had been stopped, however, isn't it?

A. That's correct.

Q. I believe you testified that each individual group was stopped near the horseshoe?

A. That's correct.

Q. Then they proceeded on to the State House Grounds?

A. That is correct.

Q. I read your affidavit on the warrant and on that affidavit you stated that some of these persons in the groups were bearing placards, is that correct?

A. That's correct.

Q. Did you examine any of these placards?

A. I read some of the signs, religious things, words referring to demonstration.

[fol. 108] Q. Words referring to what, Chief?

A. Demonstration. I've forgotten what was on them; seems like it was religious verses, for one thing. I couldn't say.

Q. Do you recall whether or not some placards carried what you would call discrimination slogans?

A. Yes.

Q. Do you recall that some of these placards carried wording to the effect that they were protesting against certain conditions?

A. I would say that was the wording. I couldn't tell you what it was, but I would say that was what was meant.

Q. That's the general sense?

A. That's right.

Q. Chief, did you form any opinion as to the purpose of that march on that day?

Mr. Coleman: If Your Honor please, that has utterly nothing to do with the charge of the breach of the peace brought here today; Chief's opinion on what the purpose of the march might have been. We're getting into the sociological question and that is not involved here. We're dealing here with the activities of these defendants, acting in concert, a large group of students and their purpose in being there is not related to the question before the Court today.

The Court: Objection sustained.

Q. Chief, did you talk with any of these persons who participated in the march on that day?

A. I don't believe I did, direct. I might have talked to Dave Carter, I think I did.

Q. Did you hear—

A. I did talk to Dave Carter, yes.

[fol. 109] Q. When these persons walked along in groups, were they conversing among themselves?

A. Yes, some.

Q. Do you recall anything which they may have said?

A. No, I can't.

Q. Now, when they were marching East on Gervais Street in individual groups approaching the horseshoe, did you

observe them obstructing any traffic, vehicular or pedestrian?

A. Of course, when they stopped, they probably did obstruct some traffic. They were two abreast and probably single file could have gotten by all right. Still, at that time, they had not been given instructions.

Q. Prior to being stopped by you and other police officers, they had obstructed no traffic?

A. I said they were in pairs and I would say a single file could have gotten by all right.

Q. Now, they walked peaceably on to the State House Grounds?

A. That's correct.

Q. Do you recall whether or not they were carrying placards at that time?

A. They were at the beginning.

Q. Do you recall what finally happened as far as the placards are concerned?

A. I can't swear but I think that Dave Carter taken up the cards. He did take up some, I know, but whether he taken up all, I don't know.

Q. Did you, Chief, walk around the State House Building with any of these persons?

A. I did not. I stayed at the horseshoe. I placed men over the grounds.

[fol. 110] Q. Did any of your men make a report that any of these persons were disorderly in walking around the State House Grounds?

A. They did not.

Q. Under normal circumstances your men would report to you when you are at the scene?

A. They should.

Q. Is it reasonable to assume then that there was no disorderly conduct on the part of these persons, since you received no report from your officers?

A. I would take that for granted, yes.

Q. Now, Chief, when these groups of persons were stopped there at the horseshoe to be given certain instructions, it tended to slow down the whole walk, did it not?

A. Slow down the walk?

Q. Slow down the normal manner in which the groups were walking, isn't that true?

A. I couldn't answer that.

Q. Did all of the various groups of persons go on to the State Capitol Grounds?

A. They did.

Q. Did they ever at any one time congregate themselves together in a massed group?

A. I don't know whether you would call it massed; I would say that I saw two or three of the groups get together when they came out of the State House grounds and back up the sidewalk headed West, they did cross the intersection at the horseshoe back to the West corner.

Q. Do I understand your testimony to be then that as they marched around the State House Grounds and came back West, when they got here at the horseshoe some of the groups tended to come together?

[fol. 111] A. That's right.

Q. Were they tending to come together because there were other persons standing there around the horseshoe?

A. Yes, other people were standing around the horseshoe.

Q. I believe, also, you were there stationed with other officers and, at this time, gave instructions to some of the group as to dispersement?

A. Mr. McNayr did.

Q. You were present?

A. That's right.

Q. Was it not at that time, also, that these persons tended to come together in larger numbers?

A. No, they would come together in larger numbers waiting for the walk light in the traffic lights.

Q. They were, then, observing the traffic regulations?

A. That's right.

Q. So that, as any normal group of persons on the street tend to do when they come to a street where it has a red traffic signal, he would just have to stop?

A. That's it.

Q. That would normally mean that you would come together closer?

A. That's right.

Q. Your testimony is, Chief, that there never was at any time any one grouping of all of these persons together?

A. All? No, I wouldn't say that.

Q. From all appearances, they were trying to keep from creating any traffic congestion. Would you state that as a fact?

[fol. 112] Mr. Coleman: He can't state as a fact what these students tended to do.

The Court: Objection sustained.

Q. Chief, you have been in law enforcement, I believe you said for thirty-one years?

A. Yes.

Q. Chief, do you recognize any of these eight defendants today as having been arrested by you or any of your officers?

A. I couldn't identify them, no.

Q. Do you recognize any of them as having participated in any specific act on March the 2nd, which led to the arrest of those persons?

A. The only thing I can say here is that they answered to their names when they were called and their names are on the arrest record and their fingerprints are on the arrest record, but as to identifying one or picking out one, I could not.

Q. As to identifying what any one did, while on the State House grounds or in that vicinity, you cannot identify them?

A. I could not.

Q. Now, because of your training, Chief, what you had observed would stick in your mind, is that not true? Very keenly, isn't that true?

A. What I observed, yes.

Q. Now, your special training as a police officer would make images that you observed stick keenly in your mind?

A. What I observed?

Q. Yes.

A. Well, I'd say a majority of it would, yes.

[fol. 113] Q. Because of your training, incidents which take place in your presence would register more keenly than with a normal person, isn't that true?

A. Well, it could. Naturally I try to observe.

Q. If you had observed these defendants or any of them

breaching the peace, that would have registered with you, would it not?

A. Well, it did register.

Q. Yet, Chief, I believe you testified that you had no conscious impression of any of these individuals participating in any act which led to their arrest? Did you not testify to that?

A. They were with a group that carried cards; they were with a group that were singing and they were with a group which were very loud and boisterous.

Q. That is an assumption, which you yourself have testified that you made, because down at Police Headquarters they answered to their names, they were fingerprinted, they were charged with the breach of the peace?

A. With a group of people, yes.

Q. Chief, do you recall any individual making a complaint to you that they were not able to use the sidewalks or cross the streets because of these persons involved?

A. I had a couple of people to make the remark "Won't you move these people, they are causing congestion" and so forth. I don't know who they were.

Q. Chief, I am reading from the official transcript of the hearing held on Tuesday, March, the 7th, and I am reading from your testimony. "Q. Within your view, did they block anything? A. At times they blocked the sidewalks and we asked them to move over and they did.

Q. Did they obey your commands on that? A. Yes. Q. So [fol. 114] that nobody complained that he wanted to use the sidewalk and he could not do it? A. I didn't have any complaints on that." Do you recall that testimony, sir?

A. I don't remember.

Q. You were here the day that that testimony was given?

A. I said that I had remarks from a couple of people and they said "Why don't you move these people away from here? They are causing congestion."

Q. But that was just in general a remark?

A. A general remark. I wouldn't say who it was, I couldn't tell you who it was.

Q. They didn't state that they, individually, were inconvenienced?

A. I think I did testify that I did ask pedestrians to move on and not block the sidewalks.

Q. I believe you did testify to that. You also testified that they moved on at your command?

A. That's right.

Q. Did you arrest on that day, in that area, Chief, any one other than the persons who are defendants before this Court today and other persons charged with the breach of the peace?

A. There were 189 or 190 arrested.

Q. They were persons which you say participated in the walk through the State House grounds?

A. That's correct.

Q. You made no arrest of anyone else, other than these persons?

A. No.

Q. No persons who were a part of the on-looking group was arrested?

A. No.

[fol. 115] Re-direct examination.

Q. Thank you. No further questions.

By Mr. Coleman:

Q. Chief, just a moment.

Mr. Coleman: May I see the warrant, Your Honor?

The Court: Yes. (Handing warrant to counsel.)

Q. Chief, I have in my hand a paper entitled "Arrest Warrant", State against George Cleveland Foster, James Jerome Kirton, Isaac Washington, Roland Johnnie Rhames, Joseph B. Bailey, Isaac Jerome Campbell, David Green and Charles Fulton Barr. Do you recognize that paper?

A. Yes, sir, that's my signature.

Q. Do you recognize the persons who are named therein as having been within the group of names of persons which were arrested on March the 2nd and a part of the student group about which testimony has previously been given?

A. These names were called.

Mr. Jenkins: If Your Honor please, we will agree that the record will show that these eight defendants were charged on that warrant, they were arrested and that he signed the arrest records and they were fingerprinted, also.

Q. Were any other persons, other than the ones brought down to the Police Station and for which warrants were issued and which you signed, arrested that day in and around the State House grounds, to your knowledge?

A. Did I sign warrants against any other group?

Q. Yes.

A. I did.

Q. Any other except the students involved in the demonstrations?

A. No.

[fol. 116] Q. So, then, the persons named in here were a part of the larger group which had been arrested by you and other officers and brought to the Police Station from the State House grounds?

A. That's correct. The names were called that night by the Judge and they answered to their names in my presence.

Q. Chief, you were questioned on cross examination at length about the appearance and orderliness of the student group. Were they orderly at all times?

A. Not at the last.

Q. Would you describe the activities at the last?

A. As I have stated, they were singing and, also, when they were getting certain instructions, they were very loud and boisterous.

Re-cross examination.

By Mr. Jenkins:

Q. As I understand your answer to the last question posed by counsel, you said after they were given certain instructions they became loud and boisterous?

A. Yes.

Q. Were those the instructions, which previously have been testified to, that they had fifteen minutes, or something to that effect, to leave the grounds?

A. I believe your question is was that—

Q. Let me rephrase the question. Chief, we were talking about certain instructions given them and after them they became loud and boisterous?

A. That is correct.

Q. Now, were those the instructions to the effect that they would have a certain length of time in which to leave those grounds?

A. That is correct.

Q. Chief, I am reading again from your testimony the other day and, in answer to a question, you said this: [fol. 117] "Well, they were singing and right noisy at times, particularly after the order was given to give them fifteen minutes to disband". Do you recall that?

A. I just testified to that.

Q. Now, when you said today, in response to question from counsel, that they were singing and boisterous, you meant the same "that they were singing and right noisy at times"?

A. That's right. I think they mean the same thing.

(Witness excused.)

Whereupon, Mr. Coleman called Mr. DAN BECKMAN, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Coleman:

Q. Mr. Beckman, what is your occupation?

A. Assistant Chief, South Carolina Law Enforcement Division.

Q. In your official capacity, Mr. Beckman, as a member of the South Carolina Law Enforcement Division, did you have occasion last March, the 2nd, to be in the vicinity of the State House grounds in the City of Columbia?

A. Yes, I did.

Q. What time did you arrive that day?

A. Right around noon, maybe a little after.

Q. Could you locate yourself upon arrival as to the front,

back or side of the State House? Where were you with relation to the horseshoe?

A. I got there shortly before noon. There were a few officers from the Sheriff's Department, maybe five or six from the Sheriff's Department, may be one of our men, [fol. 118] and I went on around to the back of the building:

Q. What, if anything, occurred after your arrival?

A. I came around from the back of the building, that was around on, I guess, South Main Street side, I came back around and I did observe one or two groups of colored people walking around the State House Building, which would be, facing Main Street, going around in this direction (indicating to the right); and other groups followed after that. Several police officers were around.

Q. Did this activity of the students to which you refer continue?

A. It continued for forty-five minutes, maybe an hour.

Q. Did you observe the area in and around the horseshoe upon your arrival at the State House grounds?

A. You mean when I first arrived or when the group started going through?

Q. When you first arrived?

A. It was clear. There wasn't anybody around there at that time. The officers that I observed were standing up on the State House steps. I didn't pay any attention much because I didn't notice anybody around at that time.

Q. Within your personal knowledge, what occurred with relation to persons in the horseshoe or the absence of persons in the horseshoe during that forty-five minute period?

A. Well, there was a large crowd of people in that area. It was right around lunch time and I believe I observed Mr. Walker talking to a group. I was in the back part, about middle-ways in there.

[fol. 119] Q. With regard to the sidewalks on either side of the monument and the lanes for vehicular traffic on each side of the horseshoe, where were these crowds located?

A. They were up on the corners, the corner of Gervais and the horseshoe, across the street; there were a group of people gathering over there by the hotel and I noticed a group of people across from the other corner, I think

that's the Palmetto Building over there, and there were people to the right, on the corner of Gervais and the horseshoe, and all around up in front.

Q. Were these people included in the crowd occupying the streets, the sidewalks?

A. Some of them were. Some were on the sidewalks and some were in the front of that horseshoe. I observed some in front of the horseshoe area.

Q. Was the traffic moving in a normal manner, or had it become stationary, more or less?

A. The traffic was moving slow at that time. If anybody had tried to get in that horseshoe, certainly they would have been held up trying to get in or out at that time.

Cross examination.

By Mr. Perry:

Q. Lieutenant Beckman, you said if anybody had tried to use that road around the horseshoe they would have been blocked?

A. I'm satisfied they would have had difficulty getting in or out.

Q. Did anybody attempt to use that, sir?

A. I didn't observe anyone trying to use it, any vehicle trying to get out of there.

Q. Thank you, Lieutenant Beckman. Lieutenant Beckman, I understand that you, too, were present and observed [fol. 120] served the students as they walked around the State House premises for some time?

A. That's correct.

Q. Now, Chief Campbell has stated that generally the students were well demeaned. Do you agree with that statement?

A. To a certain extent.

Q. To a certain point?

A. That's correct.

Q. I believe, at which time he stated that they started singing in what he described as a noisy fashion?

A. That's right.

Q. Now, sir, Chief Campbell also stated that as he observed the students walking through the State House

grounds, they were at times, some of them, in columns of twos and in some instances he observed them single file. Did you observe the same thing?

A. That's correct.

Q. Did you, sir, observe that persons who also wanted to use the sidewalks were able to do so?

A. At times the sidewalks were blocked and they could not have gone through unless somebody asked them to move, I'll have to put it that way. The sidewalks were blocked at times.

Q. In that regard, Chief Campbell said that some of the persons engaged in the procession of students tended to block the sidewalks and, when he directed them to move on, they did. Is such your observation?

A. That's correct.

Q. So, that even if any of the students who were engaged in the procession did tend at times to block the sidewalks, whenever you or Chief Campbell or some other [fol. 121] officer directed them to move on and not congest the sidewalk, they generally obeyed that command?

A. I didn't have the opportunity to have to ask any of them to move.

Q. I believe that your testimony, just as Chief Campbell's is, is that their behavior was good generally until they were told by the authorities to disperse?

A. That's correct.

Q. Lieutenant Beckman, do you recognize any of the eight persons on trial today as having been engaged in any particular part of the procession on March the 2nd?

A. The only way that I could identify them, as part of the over-all group, by fingerprints on their cards as being eight of the number when they were booked at the City Jail.

Q. You cannot definitely, other than by normal police methods of identification, identify them?

A. I think there is one, but I wouldn't want to say. I'm not absolutely positive.

Q. I see, Lieutenant Beckman, were you the ranking official from the South Carolina Law Enforcement Division present that day?

A. I was.

Q. How many other members of your staff were present?

A. Two.

Q. I believe you testified the other day that, while you were cooperating with the other officials, nevertheless you made your decision independently?

A. That's correct.

Q. At what time did you decide to place any group of persons under arrest?

[fol. 122] A. I would say approximately five minutes after Mr. McNayr had talked with David Carter.

Q. I see. Were you present at the time that Mr. McNayr talked with David Carter?

A. Yes.

Q. Did you remain in the general area where Mr. McNayr was or did you move to another area?

A. I moved over, maybe thirty feet.

Q. Did you observe any of the signs that any of the students might have been carrying?

A. I saw their signs but I don't recall any of the wording on any of them, but I remember looking at them, but I don't remember what they were.

Q. So far as you were able to observe, the nearly 200 persons engaged in this procession were generally orderly?

A. I would say, yes; but from then on, no.

Q. From then on what?

A. No, I would say they were disorderly, they were noisy.

Q. Now, you say they were noisy? Were they talking loud or singing loud?

A. Singing loud, hollering, clapping their hands, stomping their feet and that singing continued on, even after they had been arrested.

Q. How long did the singing go on before they were placed under arrest?

A. I would say about five minutes after Mr. McNayr had talked with them, about that long I'd say.

Q. Did any of the persons involved in this procession threaten you or any other officer with bodily harm?

A. No one threatened me.

[fol. 123] Q. I see. So far as you were able to observe,

did they threaten any onlooker?

A. I didn't hear them threaten any one.

Q. Were any of them armed?

A. Not to my knowledge.

Re-direct examination.

By Mr. Coleman:

Q. Mr. Beckman, getting back just a minute to this horseshoe immediately in front of the State House, now, at the time the arrests were first begun, the time of the first arrest, and immediately preceding that, say for five minutes or longer, was that horseshoe in front of the State House clear, other than normal traffic, where a vehicle wishing to use it could have used it without interference?

A. I would say maybe, at times, but it's narrow up in the front there; you don't have very much room to get a car in or out up there and, if a car had wanted to come through, probably somebody would have to get somebody to move out the way because there were people up in there.

Mr. Coleman: No further questions.

Re-cross examination.

By Mr. Perry:

Q. Lieutenant Beckman, the area, which has been generally described here as the horseshoe area in front of the State House grounds, is not really a thoroughfare, is it?

A. No, it's an entrance and exit for those having business in the State House.

Q. Wouldn't you describe that area as a parking area instead of a thoroughfare?

A. I've used that as a parking area and I've used it to transact business in there, at times.

[fol. 124] Q. Generally speaking, whenever you have entered that area in your automobile, you have been there for the purpose of parking your car?

A. To carry on business in there, sometimes I have parked in there.

Q. In other words, you just don't normally drive in and around that horseshoe for the purpose of using that as a street or getting to any particular point?

A. I used it to get in the State House.

Q. You do not agree that that area is more for parking than for a thoroughfare?

A. It's used as both.

Mr. Perry: That's all.

Mr. Coleman: No further questions.

(Witness excused.)

Whereupon, Mr. Coleman called Mr. A. C. SHORTER, JR., who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Coleman:

Q. Mr. Shorter, where are you employed?

A. South Carolina Law Enforcement Division.

Q. Did you have occasion on last March the 2nd to carry out any official duty in the vicinity of the State House or the State House grounds in the city of Columbia?

A. Yes, sir, I did.

Q. Mr. Shorter, have you ever before had occasion to be on the State House grounds in your official capacity?

A. Yes, sir, I have.

[fol. 125] Q. Would you relate what caused you to be there that time?

Mr. Perry: I'm at a loss to understand the relevancy of Mr. Shorter's previous business on the State House grounds. I, therefore, interpose an objection.

Q. Mr. Shorter, when you were ordered to make an appearance on the State House grounds on last March the 2nd, did you do that solely for the purpose of at all of preventing any persons from walking in or around the State House grounds?

A. I did not do that for any purpose of depriving anybody of the use of the State House grounds.

Q. Do you know whether or not, of your own personal knowledge, any request that has been previously made from any organization or any person for any demonstration on the State House grounds?

Mr. Perry: I object to that question on the ground that I know of no law which requires any one to secure permission to use the State House grounds, nor has it been made to appear that, even if it is necessary to secure the permission, that the permission of Lieutenant Shorter should be secured. Therefore, I object to the question on the grounds of its irrelevancy.

Q. Mr. Shorter, we will leave that without going into it. What time did you arrive on the State House grounds last March the 2nd?

A. Shortly before noon.

Q. Did you observe the horseshoe at that time?

A. I did, sir.

Q. Describe what you saw?

A. When I first arrived, there were several officers there. I joined Chief Campbell, City Manager McNayr, Mr. Harry Walker and other officers. Shortly after I joined them, the group of Negro students, walking double [fol. 126] file, two abreast, approached the west side of the horseshoe from the west, on Gervais Street. After they approached this horseshoe and, as a result of the conversation there, they proceeded through the State House grounds, around the west side of the State House to Pendleton Street and there east, on the sidewalk of Pendleton Street. They were two abreast and approximately thirty in number. As they arrived at each very narrow sidewalk there, there is only room for about two people to walk abreast; they wanted to go through. They were in more or less zig-zag formation. At the first sidewalk, I told them they could not go through in that manner, that the sidewalks crisscross and that they would block traffic, that they would also prevent anyone from passing or meeting them and going about their orderly business. I, also, observed the State House, the Wade Hampton Office Building and the Calhoun Office Building, and in each of these there were persons at windows observing this general demonstration there on

the State House grounds. The leader of that group, whom I know, was very belligerent in that he would not accept my suggestion on each sidewalk, but as he approached each and every sidewalk on Pendleton, Sumter and back on Gervais Streets, back to the horseshoe, he again said "We want to go through here". He said nothing about being single file or dispersing into smaller groups. He did get back to the horseshoe and started back around the State House. How many times they went around, I do not know. They were singing, shouting, clapping their feet and hands and, at that time, I proceeded to make some arrests.

[fol. 127] Cross examination.

By Mr. Perry:

Q. Mr. Shorter, do I understand you are Lieutenant Shorter?

A. That is correct.

Q. Are you of equal rank with Lieutenant Beckman of the South Carolina Law Enforcement Division?

A. Would you repeat that?

Q. Are you of equal rank with Lieutenant Beckman?

A. Lieutenant Beckman is not Lieutenant Beckman. He is the Assistant Chief Beckman.

Q. Thank you for correcting me on that. Then you are not of equal rank with Assistant Chief Beckman?

A. I am not.

Q. Was Assistant Chief Beckman in charge of any persons, who might have been present from the South Carolina Law Enforcement Division?

A. Assistant Chief Beckman was on the State House grounds and we were not together at all times. As officers, we have to make our own decisions. I made mine and I'm sure he made his.

Q. You mean to say you acted independently of Assistant Chief Beckman?

A. I was not acting independently of him but working with him.

Q. You were in cooperation with him?

A. That is correct.

Q. If you were acting in cooperation with him, as your superior officer, you were taking orders from him, weren't you?

A. Not on each individual arrest, no.

Q. But generally speaking, you were subject to his command, weren't you?

[fol. 128] A. I was subject to his command. He ordered that I be there to keep the peace and that's what I tried to do.

Q. Now, sir, nobody has said anything about your being there to protect the peace.

A. You asked the question and I answered it.

Q. You were there subject to the command of Assistant Chief Beckman?

A. That is a large block, as you know.

Q. Did you see the same thing that he saw?

A. I don't know.

Q. Were you always in his presence?

A. I don't know.

Q. You should be able to know that. You know a lot more about what happened that day.

A. I know what I did. I don't know what he did.

Q. Were you in his presence at all times?

A. I don't know.

Mr. Perry: I respectfully submit, Your Honor, that this witness ought to be required to answer that.

The Court: The witness will answer the question: were you or were you not in the presence of Assistant Chief Beckman?

A. Your Honor, I respectfully submit that I do not know whether I was in the presence of Assistant Chief Beckman at all times. I'd say this, I did not see him at all times.

Q. All right. Were you in any times in the presence of Chief Campbell of the City Police?

A. I was at times in the presence of Chief Campbell.

Q. Were you in the presence of Mr. McNayr, the City Manager?

A. I was at times in the presence of Mr. McNayr, the City Manager.

[fol. 129] Q. Were you in the horseshoe area, going into

the State House grounds, at the time the procession of students first entered the State House grounds?

A. I believe I arrived prior to their entering the State House grounds.

Q. Therefore, you saw the same thing that the other officers saw?

Mr. Coleman: If Your Honor please, he is obviously asking a question which he cannot answer. How can this witness testify that he saw the same thing as somebody else saw? I have let counsel go pretty far along this line, but how can a man possibly testify to any such thing?

Mr. Perry: Your Honor, I respectfully submit that I am on cross examination and you should allow me wide latitude with this witness. He obviously has seen more than anybody else saw and, therefore, we want to cross examine him.

Mr. Coleman: There's no testimony whatsoever that this man saw any more than any other person.

Mr. Perry: You read the record and you will see that he says he saw more.

The Court: Objection sustained.

Q. Now, let me ask you this, Lieutenant Shorter. Mr. Beckman says that the procession of students were orderly in every respect until they were told to disperse. Do you differ from Assistant Chief Beckman's testimony in that regard?

A. I did not hear the students when they were told to disperse as I have testified previously. I do not know when they were told to disperse.

Q. But your testimony is that when they first entered the grounds they were singing and shouting?

[fol. 130] A. My testimony is that as they went around the State House they were belligerent and trying to go through and block the crisscross walkways in the State House grounds rather than to follow my suggestions to single file and in smaller numbers and that's what I'm saying.

Q. Who were they belligerent to?

A. To me.

Q. In what manner were they belligerent to you?

A. By not following my suggestions that they would block those narrow sidewalks and those crisscross sidewalks in the State House property.

Q. Now, Chief Campbell says the group walked through, double abreast, columns of twos and in some instances single file. Does your testimony differ from that?

A. I'm telling you what I saw and what I heard. Chief Campbell will have to testify for himself.

Q. I'm just wondering really why did you see something that Chief Campbell did not see?

Mr. Coleman: Your Honor, I hate to keep interrupting counsel but, as a basic principle of law, this man cannot be put up here to witness and play off incident by incident, testimony by testimony, against some other witness. He has testified as to what he saw. He may be cross examined as to what he said. He may not be cross examined as to what somebody else did.

Mr. Perry: He can say whether or not he understands the facts as the other witnesses understood them. Your Honor, I respectfully submit now, and before you make your ruling, I urgently request permission to proceed to cross examine this witness because it is quite obvious that his testimony is varying materially from other witnesses [fol. 131] who have testified in this proceeding and I think that Your Honor is entitled to be made to realize in what manner his testimony varies.

The Court: Objection sustained as to the testimony pertaining to what Chief Campbell saw. He can testify as to what he himself saw and as to what was seen by Chief Campbell, we will rule that out.

Q. As I understand you to say, Lieutenant Shorter, you said that you heard people singing the first time they went around the State House grounds?

A. I did not testify to that.

Q. Just say yes or no.

A. I said that I did not testify to that. You asked me—

Q. Did you understand that question? You heard them singing when they first went around?

A. I said no.

Q. Now, when you did hear them first singing, what were they singing?

A. I don't remember what they sang.

Q. Would you recognize the Star Spangled Banner if you heard it?

A. If it were sung out there, I think I would recognize it.

Q. Was it sung?

A. I don't remember hearing it.

Q. Now, did you follow the same group of persons around the State House grounds at all times or did you station yourself at some point on the grounds?

A. I followed one group entirely around the State House grounds and then I walked about the State House grounds to see that nothing took place out of order.

Q. You say you walked about the State House grounds to see that nothing took place out of order?

[fol. 132] A. Correct.

Q. Did you become aware of the persons as they were congregating on the streets adjacent to the State House grounds?

A. I did observe a number of persons.

Q. Do you recognize any of the defendants before the Court today as being a part of the procession on March 2nd?

A. Would you ask them to stand up?

Q. Well, they are all sitting down. I believe you have had an opportunity to observe them?

A. If you'll ask them to stand up, I will tell you yes or no, whether I can recognize them.

Q. You have had an opportunity to observe them.

Mr. Perry: I respectfully submit, Judge, that this man can say whether or not he recognizes any of the group, persons, on that day. If he does or he doesn't, he can say.

The Court: The witness from his viewpoint can see if he recognizes them. If he can't, let him say so.

A. I can recognize some persons in the courtroom.

The Court: This first row here are the eight defendants.

A. No, I cannot recognize any of those eight.

Q. Did any of these defendants on trial today or did any person threaten you in any manner?

A. Threaten me?

Q. Yes.

A. No.

Q. Did they attempt to do you bodily harm in any way whatsoever?

A. No.

Q. When you placed certain persons under arrest, did they submit peaceably to that arrest?

[fol. 133] A. I don't know how peacefully they submitted to the arrest.

Q. Did they resist arrest?

A. They were singing and shouting and clapping their hands and what not. I don't consider that to be peacefully.

Mr. Perry: Your Honor, that does not respond to my question. I move that that answer be stricken and that the witness be directed to answer the previous question as to whether or not any of the defendants resisted his arrest.

Mr. Colman: Judge, if you please, may I comment on this? Counsel has come pretty close to arguing that this man has got to answer the question yes or no in all cases. I believe he has adequately described the activity, what these people did and why they were being placed under arrest. It's hard to tell what resist arrest means. Certainly a witness doesn't have to answer yes or no without any qualification or explanation to his answer.

Mr. Perry: Your Honor, he knows whether they resisted or not.

The Court: The question of resisting arrest is not before the Court at this time. The question is breach of the peace. They were put under arrest and you want to know were they peaceful?

Mr. Perry: No, sir, I was really asking whether or not they resisted arrest or whether they submitted to the arrest without any difficulty.

The Court: The charge is breach of the peace so we will assume that they did not resist arrest. The Court will assume that.

Mr. Perry: All right, sir. That's all.

(Witness excused.)

[fol. 134] Mr. Coleman: We have no further witnesses.

The Court: Court is recessed until 2:00 o'clock.

(Afternoon session.)

(Court reconvened at 2:00.)

DEFENDANTS' MOTIONS FOR DISMISSAL OF CASES, ETC.,
AND DENIAL THEREOF.

Mr. Perry: May it please the Court, at this time, the defendants move to dismiss the cases pending against them on the grounds that the State has failed to establish the *corpus delicti*. We further move to dismiss the case on the ground that the State has failed to prove a *prima facie* case. I will make no argument on that motion.

Mr. Coleman: If Your Honor please, sufficient evidence is in the record, sufficient to prove the crime and associate the eight defendants here today with that crime, breach of peace, and, therefore, we oppose counsel's motion.

The Court: The motion is denied.

Mr. Perry: May it please the Court, at this time the defendants move to dismiss the case against them on the ground that, by arrest and prosecution of these defendants, the police powers of the State of South Carolina are being used to deprive the defendants of the right of freedom of assembly and to freedom of speech guaranteed to them by the First Amendment to the United States Constitution and further secured to them under the able protection and due process clauses of the Fourteenth Amendment to the United States Constitution, the evidence conclusively showing that at the time of their arrest the defendants were included in a peaceful and lawful assemblage of persons, orderly in every respect upon the public streets of the State of South Carolina. That is the motion and there is no argument.

Mr. Coleman: If Your Honor please, the State opposes that motion on the ground that, if there ever has been a [fol. 135] case of this nature more clearly shown, the law enforcement officers had leaned over backward in order to permit an orderly demonstration and did permit a demonstration. The evidence is clear that they were not inter-

ferred with until such time as it became, in a manner, disorderly. The facts show that circumstances surrounding the whole occurrence created a breach of the peace, in lieu of a situation which a much worse breach would have occurred had it not been stopped.

The Court: The motion is denied.

Whereupon, Mr. Jenkins called JAMES JEROME KIRTON, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Jenkins:

Q. Mr. Kirton, speak loudly enough so that we can clearly understand you because your testimony will be reported by the Reporter. You are one of the defendants on trial here today?

A. That is correct.

Q. You were arrested with a group of persons on the 2nd day of March, 1964, is that correct?

A. I was.

Q. Will you relate to the Court the circumstances leading up to your arrest that day?

A. On March the 2nd, 1964, a group of students left Benedict College and proceeded to Zion Baptist Church; arriving at Zion Baptist Church, we held something of a semi-pep rally to reaffirm those things which we believe in. We divided up into groups of fifteen to eighteen possibly and proceeded to the State House grounds. We were stopped near the State House grounds. I'm not familiar [fol. 136] with the streets, and we were detained by some official. I'm not certain of his name either. Then we proceeded on the grounds and we went around once. Then we were detained again by an officer and we were asked to disperse and to depart from the area.

Q. Now, let's go back a little bit. You met at Zion Baptist Church?

A. That is correct.

Q. Now, you say there were a group of students from Benedict College?

A. Yes.

Q. Were there persons from other places as well?

A. I believe there were.

Q. Now, you said that you had a meeting of some sort?

A. That is correct.

Q. Will you state the purpose of the meeting?

A. The purpose of the meeting was to reaffirm our beliefs concerning segregation and the general principle of discrimination in order that we may proceed from there and go to the State House grounds.

Q. Now, you walked up the street, I believe you said, in groups of fifteen or eighteen?

A. Yes.

Q. Do you recall the appropriate distance between the groups of persons?

A. Possibly a half block. You mean between groups?

Q. Between groups?

A. Possibly a half block.

Q. Did you have any particular order or formation within the groups themselves?

A. Yes.

Q. Would you care to state how you were walking?

[fol. 137] A. We were two abreast, walking on the appropriate side of the street.

Q. I would imagine there was some general conversation among the persons in the groups?

A. If there was, I didn't notice it.

Q. You just walked along without talking to each other?

A. Without talking.

Q. Did you carry anything in your hands?

A. Some of us had signs or placards.

Q. Placards?

A. That's correct.

Q. Were you holding them in your hands or how were you carrying them?

A. Some had them in their hands and others had them around their necks.

Q. Did you have a placard?

A. I did.

Q. What was on it?

A. I am proud to be a Negro.

Q. When you were walking through the streets on your

way towards the State House grounds, did you observe the regular traffic regulations and so forth?

A. I did.

Q. Incidentally, in what group were you?

A. Second to the last.

Q. When you got to the State House grounds, other groups had already gotten there?

A. Yes, they were.

Q. And you said your group was stopped by some person at the State House grounds?

A. That is correct.

Q. You were allowed to go on to the grounds, is that correct?

[fol. 138] A. We were.

Q. Would you care to state your purpose for going on to the State House grounds?

A. The purpose was to submit a protest to the citizens of South Carolina, along with the Legislative Bodies of South Carolina, our feelings and our dissatisfaction with the present condition of discriminatory actions against Negroes, in general, and to let them know that we were dissatisfied and that we would like for the laws which prohibited Negro privileges in this State to be removed.

Q. That was your purpose individually?

A. Individually.

Q. Had you heard a similar purpose stated to others of your comrades?

A. That is correct.

Q. Would you care to state if that was the general purpose of all of you that participated in this movement?

A. The general feeling of the group was that segregation in South Carolina and discrimination was against the general principles of humanity and that we would like to see them removed.

Q. Why did you pick the State House grounds to go on?

A. Our law officials, our government officials are there and they make the laws to represent the citizens of this State, and I felt they should be aware of our particular feelings.

Q. Why did you pick this particular means of expressing your grievance?

A. I hoped that this would be an effective one to let them know that we, as citizens and as students, did not agree with the general principles of segregation and we were [fol. 139] there to protest in order that they might see for themselves that we were in number and that we did not and we still do not go along with the principles of segregation.

Q. Now, you stated that you had in mind portraying your feelings to ~~members~~ of the State Legislature, I believe you testified to that?

A. Yes.

Q. Would you state whether or not you had in mind any other persons to impress with your feelings?

A. The Governor, the Legislature and the general public of South Carolina.

Q. At the time that you went on the State House grounds, were you aware of the fact that it was public property?

A. I was.

Q. You have sat in court throughout the morning proceedings, is that correct?

A. That is correct.

Q. You have listened to the testimony from the witnesses for the State?

A. That is correct.

Q. I am certain that you heard that there was some testimony with reference to singing?

A. I heard the testimony.

Q. By a group of people?

A. That is correct.

Q. Would you care to state for the record what you know about the singing which was taking place?

A. Singing occurred after we were arrested. Now, as to the boisterousness and the loudness and disrespect for the National Anthem and other patriots, I cannot agree with those persons who testified earlier.

[fol. 140] Q. Did you personally interfere with anybody in the use of the sidewalks and the streets on that day?

A. By no means.

Q. Did you personally interrupt any vehicular traffic on the streets that day?

A. I did not.

Q. Are you aware of any of your comrades who were with you on that date who interfered with the use of the streets by other citizens?

A. If they did, it was not brought to my attention.

Q. Is it true that a large number of onlookers gathered while you were there on the State House grounds?

A. Adjacent to the State House, yes.

Q. Did you pay any particular attention to them?

A. Well, only generally. I just generally saw them.

Q. Did you hear any remarks being made by any who may have been in the audience there?

A. No, I didn't.

Mr. Coleman: I didn't catch that question.

Mr. Jenkins: I asked him if he heard any remarks being made by any other persons who were in the audience that day. I meant by persons in the audience, the onlookers, persons not actually engaged in the group with you.

A. If they said something, I didn't hear it.

Q. Did you observe any overt action on their part which would put you in fear that you would be in danger of being injured or anything of that sort?

A. My composure was not hampered by any one.

Q. You mean by that, that nobody frightened you by any action?

A. None whatsoever.

[fol. 141] Q. Did you observe any of your comrades or persons with you who appeared to be apprehensive that they would be attacked by any person?

A. If they felt it, they didn't show it.

Q. By the group, I mean any of the onlookers who may have been there?

A. No.

Q. Did you hear any of your friends or persons with you express any opinion—please strike that. You testified as to what was on the placard which you carried?

A. That is correct.

Q. Do you know who prepared these placards?

A. Students prepared them.

Q. Students. Were you among the group of students that prepared them?

A. I was.

Q. Do you know what was on any of the placards which were carried?

A. I have a memory of some of the other statements. Not all of them.

Q. Would you care to state for the record what some of those placards there said?

A. Mine had "I am proud to be a Negro". Others had statements "Give me liberty or give me death". "Down with segregation". I can't remember all of them.

Q. Can you state the general expression or tone of those placards which you were carrying?

A. The tone of all the placards were in harmony with the antisegregation movement in this State.

Q. Do you know what became of those placards? Are they in court today?

A. If they are, it's not to my knowledge.

Q. Do you know what became of them?

[fol. 142] A. I do know they were taken up. Some of them were taken up by Reverend Carter.

Q. By a member of your group on that day?

A. Yes, sir.

Q. You do not now know what have become of them?

A. I do not.

Q. You are a student at Benedict College?

A. I am.

Q. How long have you been a student there?

A. This is my third year. Junior Class.

Q. Would you state whether or not you belong to any student group?

A. Yes, I do.

Q. Would you say that the persons who were associated with you on March the 2nd of 1961, when you went on the State House grounds, were members of the group of which you are associated?

A. That is correct.

Q. Would you care to state the nature of your organization?

A. The general nature of the organization is non-violent protesting against discriminatory actions against Negroes in this State and we adhere to the principles of peaceful resistance, and we believe that those laws which are unjust,

we believe in trying to find just means of having them discontinued.

Q. Now, in trying to exert what you consider your rights, are you conscious of the fact that other citizens may have equal rights?

A. I believe that other citizens have equal rights.

Q. Does your organization have any teachings or practices with reference to the rights, respective rights of other citizens?

[fol. 143] A. It is the general consensus of the organization to respect the rights of others as well as to have them respect our particular rights.

Q. And you say that non-violence is a part of your creed?

A. It is the basis.

Q. Incidentally, where is your native State?

A. This is my native State, South Carolina.

Q. South Carolina. You have lived in South Carolina the majority of your life?

A. All of my life.

Q. This is your third year at Benedict College?

A. That is correct.

Q. Are you one of the officers in this particular student organization at Benedict College?

A. I am not.

Q. Do you regularly attend the meetings?

A. I do.

Q. Do you have any regular meeting time?

A. Not a set date. We meet when we feel it is needed.

Q. Meet when?

A. We meet when we feel it is necessary.

Q. Do you meet at the call of your officers?

A. Generally, yes.

Q. As a Junior in College, what is your age?

A. I am twenty years old.

Q. Do you know generally the members of your student organization?

A. Generally, yes.

Q. Do you know the leaders and officers of your organization?

A. Yes, sir.

Q. Were you in this court on Tuesday of last week?

A. I was.

[fol. 144] Q. Do you know James Edwards, Jr.?

A. I do.

Q. Is he a student at Benedict College?

A. He is a Benedict student.

Q. Will you state approximately how long you have known him?

A. Since the latter part of January.

Q. January of what year?

A. 1961.

Q. 1961? Is that when he first came to Benedict College?

A. Yes.

Q. Is James Edwards, Jr., a member of your student organization, the same organization you have previously spoken of?

A. He is a member.

Q. He is?

A. He is.

Q. I believe you said you have known the officers and leaders of the student group, is that correct?

A. I do.

Q. Is James Edwards, Jr., one of the officers or leaders of the student group?

A. He is not.

Q. To your knowledge, is James Edwards, Jr., a leader or officer of any student organization group on Benedict College campus?

A. He is not.

Q. On March the 2nd, 1961, was James Edwards, Jr., a member of the group that went from Zion Baptist Church to the State House grounds?

Mr. Coleman: How far does the Court want this line of questioning to go? James Edwards, Jr., is not on trial here today.

[fol. 145] The Court: Mr. Coleman, I certainly am interested in getting to getting to (sic) the bottom of this and, in view of the fact that Edwards has been tried, for my own personal interest and personal knowledge, I would like to find out about Edwards, myself.

Mr. Jenkins: I have only a couple more questions with reference to this line of questioning.

Q. I believe the question was: on the 2nd day of March, 1961, James Edwards, Jr., formed a member of the group of you that went on the State House grounds?

A. He was with us, yes.

Q. Was that as a part of your student group movement?

A. He was there as a part of the movement.

Q. To your knowledge, was James Edwards, Jr., one of your leaders on that day?

A. He was not.

Mr. Jenkins: I have no further questions.

Cross examination.

By Mr. Coleman:

Q. The Reverend Carter, to whom you made reference a few minutes ago, is that David Carter?

A. That is correct.

Q. Is he in the courtroom?

A. Yes, he is.

Q. Was he a leader of the student group on March 2nd?

A. He was our recognized leader.

Q. He did direct this demonstration?

A. Yes.

Q. Isn't it true that your student group was allowed to proceed in and about the grounds of the State House for approximately an hour?

[fol. 146] A. From forty to sixty minutes, yes.

Q. That was without interference from the police?

A. Without direct interference, yes.

Q. Direct? Did they give you any interference at all?

A. After a certain length of time, we were asked to disperse.

Q. That was after forty minutes to an hour that you have testified to, is that correct?

A. Yes.

Q. No interference was put in your way prior to that time?

A. No.

Q. I believe that this demonstration, as you call it, began about 12:00 o'clock, is that correct?

A. In the neighborhood of 12:00.

Q. Was that designed, so far as you know, to coincide with the convening of the Legislature that day?

A. Not to my knowledge, whether it was actually designed to coincide with that, but certainly the Legislature, as I previously testified, they are a part of our lawmaking body here.

Q. It is common knowledge that the Legislature generally convenes about eleven or twelve o'clock every day?

A. It is.

Q. You knew that?

A. Yes.

Q. Don't you think, if the only purpose of your demonstration that day, was to call attention to the various members of the Legislature and any other officials that may have been in or out the State House, that two hundred or approximately two hundred Negro students marching in and about the grounds with placards would have had time in an hour to sufficiently demonstrate to any of them, by [fol. 147] person, their views or whatever views they were expressing by demonstration or call attention to themselves?

A. Are you asking that we could easily have expressed our view to one person instead of—

Q. No. I'm asking if you don't think an hour was long enough for your purpose?

A. I don't.

Q. How long did you intend to demonstrate?

A. Until conscience told me that the demonstration had lasted long enough.

Q. Isn't it true that you were aware of the extraordinary number of people who had congregated in this horseshoe in the hour's period during the time the demonstration had occurred?

A. I don't think there was such an extraordinary number.

Q. There was an unusual crowd, wasn't it? You're not going to tell us it wasn't, are you? Do you normally see such a crowd on the horseshoe?

A. Normally, I don't visit this particular place, but I still say I don't think it was such an unusual crowd.

Q. You don't think that your activities there during this hour period attracted an unusual crowd in and around the horseshoe?

A. There were several policemen and other officials of that nature.

Q. You're not deliberately avoiding the question, are you?

A. By no means.

Q. Let me ask it again and see if you will answer it. Do you think—

A. I don't think.

Q. You don't think what?

[fol. 148] A. I don't think, as you put it, that this crowd was there. I don't think it was a crowd.

Q. You don't think there was a crowd there? Did you estimate the number of people there?

A. I can't because I was in the process of moving, a continuous march, I wasn't standing still.

Q. Did you hear the instructions given by the police officials to the students to disperse?

A. They were passed along. I didn't hear the individual instructions.

Q. Did you know about them?

A. Yes.

Q. Why didn't you proceed to disperse?

A. Well, mainly because the State House is public property and I thought the Law Enforcement Agency had taken a step too far probably, when they asked us to leave.

Q. You thought they were wrong?

A. In my judgment, yes.

Q. You thought they shouldn't have done it. Is it also your view, your opinion, along that same line, that you should have been allowed, you and the other students, to continue indefinitely to this sort of concerted effort, a public demonstration, using two hundred students, regardless of what might have occurred as a result of those demonstrations?

A. When you say "what might have occurred"—I don't know what you mean.

Q. Regardless of the situation which might have been

created with regard to blocking sidewalks, blocking the street, breaching the peace generally?

Mr. Perry: I would like to generally interpose an objection to any questions which would call for this witness to give an answer based upon speculation. I note that [fol. 149] Mr. Coleman says "regardless of what might have occurred" and there is no evidence that anything did occur. I object to the question on the ground that it calls for a speculative answer.

Mr. Coleman: If Your Honor please, the witness has testified and admitted that he and other students were allowed to demonstrate for an hour. I want him to say to what extent he thinks he should have been allowed to go in order to carry out this demonstration, with regard to the crowd which had developed in and around the State House grounds in addition to the students and which he saw and of which he has heard testimony this morning. If he does not wish to answer the question, he can so state and that would be all.

Mr. Perry: First of all, I believe the witness has previously said that he thought that he should be allowed to go as far as conscience would allow; secondly, I should like to note that as to how far the person engaged in the procession on March 2nd should have been allowed to go would be for Your Honor to say and not for the witness. I believe that principally what we have here, that Your Honor is being called upon to say whether or not on March the 2nd the procession of individuals had been allowed to go on for too long a period of time, as to how far this witness feels they had a right to continue to walk through the State House premises, I do not believe would be a proper subject for cross examination of this witness but rather be an issue which counsel might address ourselves to this Court. In other words, I believe it is within the prerogative of Your Honor to say exactly what the situation was, in the light of all the testimony which has come out of this particular line of cross examination and should not be allowed.

[fol. 150] Mr. Coleman: I might say one other word, Your Honor. This witness has been quite free to express in full at least his idea of the purposes of this group. He has

stated why he went to the State House grounds. He has stated why he thinks that group went, information of which he had personal knowledge. He has admitted that he was allowed to demonstrate for an hour there, now, if, after setting forth all of those facts, isn't his opinion and his thoughts and the purposes of this group, which seems to be at variance with what actually occurred with this persisting demonstration for more than an hour. I should like to ask the witness: do you wish to answer my question?

The Court: Objection overruled. Answer the question.

Q. If you do not say so, I will not persist.

A. I think we should have continued as long as conscience and providence said so.

Q. Night and day, if necessary?

A. If necessary to accomplish the end, yes.

Q. Then, anything that might have been short of acts of violence on your part; you think would have been justified?

A. Your question seems to mean that there were indications of violence, then, I could not answer that question.

Q. I said short of violence?

A. As long as violence and the rights of other citizens were not being harmed, it should have been continued.

Q. You didn't see any large crowd in the horseshoe, is that correct?

A. No large crowd.

[fol. 151] Q. No unusual crowd? Could you estimate the number?

A. I cannot.

Q. Could you estimate it with relation to the size of the student group?

A. There were approximately two hundred students and, as I previously stated, we were marching, not standing still in the horseshoe, therefore, I don't know what happened at the horseshoe.

Q. Didn't you pass there from time to time?

A. As I previously stated, I was allowed to only go around once.

Q. Did you see the horseshoe at any time during that hour?

A. I did.

Q. Did you see an unusually large crowd there?

A. I didn't.

Q. Have you been at Benedict for the three years?

A. That is correct.

Q. All three years. I believe you said that you did not hold an office in the organization?

A. I do not.

Mr. Coleman: No further questions.

Mr. Jenkins: Unless the Court has some questions, we have no further questions.

The Court: The Court has no questions.

(Witness excused.)

Mr. Perry: May it please the Court, at this time the defendants would like to stipulate that, if the remaining defendants on trial here today, were to be called to the witness stand to testify that their testimony would be substantially the same as was the testimony of the witness who has just testified.

Mr. Coleman: We will agree to that.

[fol. 152] Mr. Perry: The defendants have no further testimony or evidence.

The Court: Does the State have anything in reply?

Mr. Coleman: The State has no evidence in reply.

Mr. Perry: At this time the defendants respectfully renew our motions for dismissal, which were urged upon the Court at the conclusion of the State's case and we ask that they be repeated in the record as if I were making them verbatim again at this time.

The Court: Any objection?

Mr. Coleman: The State opposes the motions on the grounds heretofore set out.

The Court: Motions denied, and that will be entered in the record.

Mr. Perry: Nothing further at this time.

Mr. Coleman: Nothing further from the State.

Mr. Perry: We will waive the making of a final argument. Your Honor, and we call upon Your Honor for a ruling based upon the evidence.

Mr. Coleman: Since the defense has no argument, we reserve our rights to a final argument.

The Court: The Court will recess for five minutes.

(Court reconvened.)

The Court: I'm going to call out the names of the following defendants in this case. As I call them out, I would like for them to approach the Bench, from left to right, as I face you.

George Cleveland Foster, James Jerome Kirton, Isaac Washington, Roland Johnnie Rhames, Joseph B. Bailey, Isaac Jerome Campbell, Davie Green, Charles Fulton Barr.

The Court: George Cleveland Foster, how old are you?

George Cleveland Foster: Seventeen.

[fol. 153] The Court: You are now seventeen?

George Cleveland Foster: Yes, sir.

The Court: What school do you attend?

George Cleveland Foster: Carver High School in Spartanburg, South Carolina.

The Court: James Jerome Kirton.

James Jerome Kirton: Yes, sir.

The Court: I believe you stated on the witness stand that you are twenty?

James Jerome Kirton: Yes, sir.

The Court: Isaac Washington.

Isaac Washington: I am eighteen.

The Court: Roland Johnnie Rhames.

Roland Johnnie Rhames: Benedict College. Twenty.

The Court: Joseph B. Bailey.

Joseph B. Bailey: Benedict College. I'm twenty.

The Court: Isaac Jerome Campbell.

Isaac Jerome Campbell: Benedict College and I'm twenty-one.

The Court: Davie Green.

Davie Green: Benedict College and I'm eighteen.

The Court: Charles Fulton Barr.

Charles Fulton Barr: Benedict College. Twenty years old.

The Court: Would the defense counsel like to say anything at this time?

Mr. Perry: Your Honor, of course, by word of mitigation, I would like to urge that Your Honor can determine that these are all young men, high school and college age, who, according to their testimony, acted as they did in the sincere belief that they were joining together in concert for the purpose of expressing their grievances toward the public generally. I urge for your consideration, the testimony of all of these officers, with the possible exception of [fol. 154] one, their conduct was orderly. It seems that the basic complaint, which rings out in all of the testimony of the officers is the fact that they did not disperse when they were ordered to. Now, there is other testimony concerning the loud manner of their singing but I cannot believe that the loudness of the singing was the thing which precipitated their arrest. I think it was the fact that they walked together in concert and refused to disperse when directed by the officers to do so. Looking at all of the testimony, it seems to stand out in my mind, Your Honor, these young men are not of a criminal mind or intent and I ask that you be lenient in sentencing them.

The Court: Would any of the defendants like to say anything at this time?

(No reply.)

SENTENCE

The Court: The testimony that has come out today has certainly thrown a light, a new light, on these proceedings. As I stated last week, the idea of adults using youths for the purpose of violating the law is one which is a grave concern to all of us. I'm taking your youth into consideration, every one of you. From the testimony of witnesses to date, the actual recognized leader is, one David Carter, and that was brought out by the State, also by the defendants, by one of the witnesses for the defense. I'm taking that into consideration. I'm taking your youth into consideration, also, but I want to tell you now, if you should ever come before me again with anything, that would indicate to me a flagrant violation of the law on your part, that you had no respect for law and order and I know that you do, I have reason to believe that you do for every

one of you young men know that we have international problems, problems of space and heaven knows what else to worry about.

[fol. 155] To repeat the finding of the Court, I find each and every one of you guilty, each of you now standing before me.

The sentence of Isaac Jerome Campbell, your age was twenty one, \$100.00 or 30 days.

As to you young men under twenty one, the sentence of the Court will be \$100.00 or 30 days, and, again, I suspend half of that sentence upon the payment of the fine of \$50.00.

Mr. Perry: May it please the Court, at this time, the defendants move for arrest of judgment or, in the alternative, for a new trial upon all grounds previously noted in the several motions for dismissal and we ask that they be repeated in the record verbatim as if I were so stating them at this time.

The Court: It shall be repeated in the record. All motions are denied.

Mr. Perry: May it please the Court, at this time, we move for arrest of judgment on the ground that the Court erred in finding the defendants guilty, the evidence having shown conclusively that the defendants were lawfully assembled with other persons upon the public streets and property of the State of South Carolina for the purpose of giving public expression concerning their grievances, a right secured to them by the First and Fourteenth Amendment to the United States Constitution. That concludes our motion.

The Court: Motion is denied.

Mr. Perry: At this time, may it please the Court, defendants give notice of intention to appeal. We will file the written motion within the time required by Statute and we ask that Your Honor set the appeal bond.

The Court: The appeal bond for each will be \$10.00.

[fol. 156] Mr. Perry: Your Honor, it's so late in the day, the actual mechanics of substituting the appeal bonds for the recognizance bonds, which are on file, as to each one of them, it may take us a day or two.

The Court: The Court will be very glad to grant that until Thursday. Court adjourned until 10:00 o'clock Thursday morning, March 16, 1961.

Reporter's Certificate to foregoing transcript (omitted in printing).

TRANSCRIPT OF TESTIMONY

Before Honorable Frank Powell, Magistrate on Thursday, March 16, 1961, Richland County Court House, Columbia, South Carolina.

APPEARANCES:

For the State: J. C. Coleman, Esq.

For the Defendants: Matthew J. Perry, Esq., Lincoln C. Jenkins, Jr., Esq., Donald James Sampson, Esq.

The Court: I would like to announce the rules of the Court. There will be no pictures taken within this courtroom of any type. Any one who wants to attend these hearings may do so as long as there is a seat available, however, we cannot permit any one standing up around the walls.

The Court has before it warrants charging the following persons with breach of the peace. The warrant reads in part: State of South Carolina, County of Richland. Personally appeared before me, Frank Powell, Magistrate of the said County and the said State, L. J. Campbell, being [fol. 157] duly sworn, says that James C. West, Sinclair Salters, Hezikah Johnson, James Clyburn, William Erick Moultrie, David Carter, Benjamin James Glover, Samuel S. Williams, and others, did, at Columbia, South Carolina, on March 2nd, 1961, on the State Capitol grounds and on adjacent sidewalks and streets did commit a breach of the peace in that they, together with a large group of people, did assemble, impede the normal traffic, sing and parade with placards, failed to disperse upon lawful orders of police officers, all of which tended to violation of the breach of peace in view of existing conditions. The Court will now read the persons charged on these warrants: James C. West, Sinclair Salters, Hezikah Johnson, James Clyburn, William Erick Moultrie, David Carter, Benjamin

James Glover, Samuel S. Williams, Arthur Whitfield Stanley, Jr., Wendell Dailey, Lennie William Glover, Samuel Edwards, David Laurence Perrett, James Allen Carter, Clifford James Rice, Delbert Leon Woods, Wilbur Harrison Walker, Alfred Odell Lemon, James W. Canteley, Isaac W. Williams, Clifford B. Bell, William H. Cooley, Robert Henry LaPrince, Frank E. Gore, Earl Peters, Jr., Henry H. Harris, Charles R. Miller, Charles McDew, Maxie Epps, Henry Williams, Leroy Hogans, Jimmy Lee Smith, James Reeder, Jr., George Allen Anderson, Thomas D. Hornsby and Anthony McFadden.

Are these persons present?

Mr. Jenkins: They are present in person or by counsel. One or two persons may not be present. One is Benjamin J. Glover and William Moultrie from Camden, also, is not here. Those defendants, if Your Honor please, they are represented by counsel. We would like the record to show that counsel has agreed that these defendants may be [fol. 158] tried in their absence and they will be bound by whatever rules and decisions that are made by the Court. Is that agreeable by counsel?

Mr. Coleman: Yes.

The Court: Are these persons represented by counsel?

Mr. Jenkins: Yes, they are.

The Court: As I call the names of these persons out, will they appear before the Bench?

(The Court called the names of all defendants.)

Defendants arraigned before the Court.

The Court: Are you the persons named in this warrant before the Court charged with the breach of the peace in the City of Columbia, County of Richland, on March 2nd, 1961 and were you released on bond to appear before this Court today?

Defendants: Yes sir (in unison).

The Court: How do the defendants plead?

Mr. Jenkins: They plead not guilty.

Defendants returned to seats in courtroom.

The Court: Is the defense ready for trial?

Mr. Jenkins: Yes, Your Honor.

The Court: Is the State ready for trial?

Mr. Coleman: Yes, Your Honor.

Whereupon, Mr. Coleman called IRVING G. McNAYR who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Coleman:

Q. Mr. McNAYR, you are the City Manager of Columbia, I believe?

A. Yes, I am.

[fol. 159] Q. As such City Manager, do you have direct supervision of the activities of the Columbia City Police Department?

A. Yes, I do.

Q. Did you have occasion on March the 2nd last to be in the vicinity of the State House grounds in the City of Columbia?

A. Yes, I did.

Q. What time did you arrive there?

A. At the State House grounds, I arrived at approximately a quarter of twelve.

Q. What did you observe when you got there?

A. When we arrived there, when we first arrived, I observed a number of police officials, both from the City of Columbia and the State Law Enforcement Division, possibly some Deputy Sheriffs from the County, standing generally around what is known as the horseshoe area.

Q. Would you describe the horseshoe area so far as pedestrian traffic lanes and vehicular traffic lanes are concerned?

A. Yes. The horseshoe area is used primarily for the parking of State official's cars, that is, the macadam area there. There is some passage in and out of vehicular traffic by people entering and leaving the State Capitol Building. In addition to that, you have the main sidewalk areas leading into the State Capitol on either side of the horseshoe area.

Q. Others than the persons you have just mentioned, the police officers and yourself, were there any other persons in or about the horseshoe?

A. None, to my knowledge, at the time of my arrival. There may have been a few others standing around but I didn't pay any particular attention to them.

[fol. 160] Q. What, if anything, occurred thereafter to make you think possibly whether or not some official action on your part should be taken?

A. We were forewarned that there would be a march or a procession on the State Capitol and a demonstration at that point. Soon after we arrived, we observed groups of Negro students marching up Gervais Street.

Q. Could you estimate the size of the group?

A. I estimated it at that time at approximately 200.

Q. Did they enter the horseshoe?

A. They moved up the sidewalk towards the horseshoe and they were met, just before entering the grounds, by Mr. Harry Walker of the Governor's office.

Q. Were you present at that time?

A. Yes, I was.

Q. Do you remember that any of the defendants named today were in the group?

A. Yes, I recognized probably three or four of those people who are here today.

Q. Can you name one possibly?

A. I recognized the recognized leader, David Carter.

Q. Did you have any conversation with David Carter at that time?

A. Not at that immediate time when he arrived, no.

Q. What official position, if any, does Harry Walker have?

A. Mr. Harry Walker is the representative, the legal representative of the Governor of South Carolina and was apparently in charge of the SLED officers present at that time, and in general charge of the State House grounds, in general control of it.

Q. State whether or not you have any personal knowledge of whether any official instructions from a police [fol. 161] officer were given to any one or all of these defendants.

Mr. Jenkins: If Your Honor please, at this time we object on the ground that the best evidence would be the testimony from the officer which may have given such instructions, that is, testimony directly from this officer, and we object to this witness testifying as to instructions given by anyone else.

Mr. Coleman: If Your Honor please, any instructions given to any of these defendants here, within the hearing and presence of this witness, I think it's admissible and, if it's hearsay, it's an exception to the hearsay rule.

Mr. Jenkins: We submit, if Your Honor please, that the best evidence would be the officers themselves, present to testify as to what instructions they may have given. There is no showing to be made in the court why the officers themselves are not here to testify, and we object to any testimony along that line.

The Court: The Court feels that, in this particular instance, the defendants here have been identified by the witness and, in this case, the objection is overruled.

A. Would you repeat your question?

Q. Did you, yourself, have any conversation with any one of these particular defendants here today?

A. I did not, at the time in question. All the conversation and instructions were between Mr. Walker and some of the defendants.

Q. Did you hear Mr. Walker give any official instructions to any particular defendant here today?

A. Yes, I did.

Q. Do you remember which defendant?

A. Well, I know Carter was one of those who received instructions.

[fol. 162] Q. Were these instructions given in your presence?

A. They were, if I may describe the manner in which they were given I think it would be helpful to the Court. As the groups moved forward, and these Negro students were in groups of anywhere from fifteen on up to thirty, Mr. Walker selected the lead student, on the left coming up Gervais, thinking in terms of that person leading the group, and he gave instructions directly to that person. He first questioned him as to his name, purpose for being there, whether or not he was leading the group and then instructed them on the fact that he did have the privilege, he and his small group, of going through the State House grounds, just as any other citizens would have. He further instructed him that there should be no demonstration, in

each case, in my hearing, that the State law allowed no demonstrations. I heard the defendants, the leaders, reply that they were there for the purpose of demonstrating and fully intended to do so. Mr. Walker then instructed them that they could go through the State House grounds and they did proceed to do so. I believe he also told them they would be allowed to go through the State House grounds one time for purposes of observation.

Mr. Jenkins: Your Honor, at this time, I'd like to renew my objection as to all of this line of questioning and the testimony that is in answer to the question which has been presented here and I ask that they be stricken from the record. I am repeating my objection. That is strictly hearsay and violates the well known rule of law against hearsay evidence on the ground that the best evidence would require that Mr. Harry Walker, who is the person who gave the instructions, to be present and testify for the record as to [fol. 163] the instructions he gave. The record will show that the witness has testified as to what he thinks the opinion of Mr. Walker was in giving such instructions. We renew our objection to this entire line of questioning and we respectfully request that the answer be stricken from the record.

Mr. Coleman: If Your Honor please, I don't remember any evidence of Mr. McNayr's opinion.

Mr. Jenkins: Mr. McNayr said that in pointing out the person on the left, taking that person to be a leader or something to that effect.

Mr. Coleman: We are perfectly willing, if there was any opinion in the evidence in regard to the opinion of Mr. Walker, that it be stricken. I don't remember that.

The Court: The Court is under the impression that was an opinion and that will be stricken from the record. As to the previous objection, that is overruled.

Q. Mr. McNayr, what course of action, if any, did the group of students then take?

A. They then proceeded to go through the State House grounds, usually accompanied by a police officer or officers.

Q. How long did this continue?

A. I would say for somewhere between fifteen—a half hour.

Q. Where were you during this time? Were you in the vicinity of the horseshoe or were you moving about the State House grounds?

A. I was not moving about the State House grounds. I remained in the vicinity of the horseshoe, moving back and forth, primarily between from in front of the statue, then west to the other side of the horseshoe.

Q. Then, you were in the horseshoe all of this time? [fol. 164] A. Yes.

Q. State whether or not you noticed or saw any change in the size of the number of persons who might or might not have been within the horseshoe area?

A. Yes. Soon after the Negro students arrived at the entrance to the horseshoe, crowds began to gather. This was in the neighborhood of twelve o'clock, noon, just prior to twelve o'clock, noon, and more and more people gathered within that area to the point where they were blocking both of the driveway entrances and the sidewalk area. They had to be told to move along, not to impede the sidewalk traffic, and it was necessary to station a policeman in the intersection of Gervais and Main Streets in order to keep traffic moving, because, again, a large group of persons attracted the passers-by in automobiles.

Q. Did you note the traffic, if any, which was on Gervais Street, immediately adjacent to the horseshoe?

A. Yes, I did.

Q. Are you familiar with the normal flow of traffic on that street?

A. Yes, I'm quite familiar with it.

Q. Was the traffic flow at that time normal?

A. It was not normal—no, it was greatly slowed up. It had to be kept moving by a police officer. It was greatly slowed up, again, being attracted by the large group on the State House grounds. Normally, the lights control the traffic quite well.

Q. After a period of approximately a half hour or during that period, did any police officer or any one else, to your knowledge, interfere with this group of students?

A. Not to my knowledge, no.

[fol. 165] Q. After the period of a half an hour, approximately a half an hour, which you have just mentioned, what action, if any was taken by you?

A. Following the students marching through or walking through the State House grounds, they, then, or a great number of them, came around from the back of the State House or the side of the State House and started to forming groups to come down Gervais Street, heading each towards the horseshoe, and by that time a great number of people had gathered in the horseshoe area, along the State House grounds in that immediate vicinity, particularly across the street on both sides of Main Street, facing the horseshoe area. It was, at that time—now, I can be exact in my time—it was just about a quarter to one when the students began to gather there. The crowd had reached such proportions and there were numerous people coming through the State House grounds, apparently from the State Office buildings in the rear of the Capitol itself, who were being impeded in getting through, a number of them stopping as a result of it, so, that, in my judgment, I felt that the conditions were such that the students, who were the main attraction to all of these people, should disperse. I, then, was in touch with David Carter, the recognized leader of this group, and I instructed him that I felt that the conditions were such that the students should disperse in small groups from the area and that I felt that the conditions were such that they should be dispersed within the next fifteen minutes. These instructions were given at approximately five minutes of one. Carter, then, as each group moved forward, did not carry out my instructions in the manner in which I gave them. He used the occasion to harangue the students, to raise [fol. 166] them to a fever pitch, using a chant, a religious-type method for arousing the students to stay in line, to be arrested, if that was their chosen line.

Q. Did you hear any singing, chanting or anything of that nature from the student group?

A. Yes.

Q. Describe that as best you can.

A. With the harangues, which I have just described,

witnessed frankly by everyone present and in this area, the students began answering back with shouts. They became boisterous. They stomped their feet. They sang in loud voices to the point where, again, in my judgment, a dangerous situation was really building up.

Q. Did the students disperse after the instructions were given to them?

A. No, they did not.

Q. What course of action was then taken by you?

A. I then instructed the Chief of Police, Chief Campbell, to proceed to arrest all of the students. I might add that the SLED officers were working in conjunction with and in cooperation with the City Police officers, and they, too, moved under those general instructions.

Q. I see. Your witness.

Cross examination.

By Mr. Jenkins:

Q. You have stated, Mr. McNayr, that you had advanced warning that these students would move on the State House grounds on that particular day?

A. Yes, I did.

Q. Would you state how much advance warning you had?

A. Yes. I received a telephone call from Chief Campbell at approximately 10:30 that morning informing me that [fol. 167] the students were then in the process of meeting at the Zion Baptist Church and that, his information was, that they planned to proceed from there to the State House grounds for the purpose of demonstration.

Q. And they actually proceeded to the State House grounds possibly how long after 10:30?

A. I would say they came out of the church at some time between quarter past eleven and half past eleven, then proceeded to walk.

Q. You had approximately an hour's notice?

A. Yes.

Q. You had ample time, didn't you, to get ample police protection, if you thought such was needed on the State House grounds, didn't you?

A. Yes, we did.

Q. So, if there were not ample police protection there, it was the fault of those persons in charge of the Police Department, wasn't it?

A. There was ample police protection there.

Q. There was ample police protection and there was no need for the arrests which were made, isn't that true?

A. No, that is not true.

Q. I believe that the testimony has been that you arrested these persons because a dangerous situation was about to take place or something to that effect?

A. In my judgment.

Q. You also stated that, in your judgment, you had ample police protection to handle the situation?

A. That's correct.

Q. So it wasn't necessary to arrest these students that were on the Grounds?

[fol. 168] A. Yes, it was necessary to arrest them. Simply because we had ample policemen there for their protection and the protection of others, is no reason for not placing them under arrest when they refused a lawful request to move on.

Q. We are not charged with refusing an order.

A. You are charged with a breach of the peace and it occurred during this period.

Q. Breach of peace being merely that the students came on the grounds and there registered certain protests which they had; that, in your mind, is a breach of the peace?

A. No, that isn't what I testified.

Q. Now, I believe your testimony was to the effect that no police officer interfered in any manner with the students or something to that effect?

A. I said, to the best of my knowledge, that they did not. You must understand that they were moving around the State Capitol Grounds.

Q. That's what I was getting at. You confined your activities mostly to the horseshoe area?

A. Yes, I did.

Q. And since the State House Grounds cover approximately two blocks by one block—

A. Probably about two blocks square.

Q. There was ample opportunity for other police officers to really interfere with these students and you know nothing about it?

A. That is true.

Q. You observed the students coming eastward on Gervais Street or approaching the State Capitol?

A. Yes.

[fol. 169] Q. At that time, you said they were marching in groups, small groups?

A. They were marching in groups of from fifteen, the largest approximately thirty.

Q. They were walking two abreast or single file?

A. Two abreast.

Q. Do you recall the approximate distance between each group?

A. Well, as they were walking, I would say certainly at arm's length or possibly a greater distance. I think the distances were varying.

Q. The distances between the groups themselves—let us say, the first group and the second group and the second and the third?

A. As they were marching up, they could have been five feet or ten feet apart.

Q. I believe your testimony on previous occasions said they were from a quarter to a third of a block apart, the groups, do you recall that?

A. I don't recall any testimony by me to that effect. They may well have been, however, but it would vary as they marched along.

Q. Now, each group was stopped, I believe you testified, up near the horseshoe area?

A. That's correct.

Q. They were stopped by an official of the Governor of South Carolina?

A. That's correct.

Q. You were also present at that time as an official of the City of Columbia?

A. Yes.

[fol. 170] Q. Was the effect of your stopping these groups of students to make the second group, let us say, push up into the first group or at least get nearer?

A. Yes, to move up.

Q. That would make the third group move up to where the second group was?

A. Again, I think they kept a normal distance.

Q. It is a fact, is it not, that by the interference of you and other officials you created the very situation that you said you were trying to prevent?

A. No, that is not true.

Q. You have testified to the congestion of the area of the horseshoe?

A. Yes.

Q. Had these students been allowed to continue in the manner in which they had approached the horseshoe area, this congestion would not have been there, would it?

A. That I can't answer because they were not allowed to continue by Mr. Walker.

Q. So, you certainly, by your actions, contributed to whatever congestion there may have been there in that area?

A. I think you misunderstood my testimony. I did not have anything to say to the students or instruct them in any way at that point.

Q. When I say "you" I mean the official action by someone, instructing these groups of students in the horseshoe area, there would not have been this congestion?

A. Yes, there would have been congestion. A group of students, such as this, moving in with signs and placards [fol. 171] as they carried, would cause congestion just naturally.

Q. There was no congestion among the groups of students themselves, was there, prior to the official action stopping them in the horseshoe?

A. No.

Q. Now, then, your testimony here is that the groups were allowed to walk through the area of the State House Grounds without further molestation, as far as you are concerned?

A. That was not a molestation; that was simply stopping them to give them instructions on the part of Mr. Walker.

Q. Here again, we are involved in the use or the meaning of words—according to which side of the fence you are on, the meaning of it?

A. I wanted to get across my interpretation of it.

Q. Yes, sir. Now, then, they walked perhaps through the area of the State House Grounds—did they end up down near the area of Sumter Street?

A. Yes, as nearly as I could determine, they moved down Sumter Street and then back on to Gervais and down.

Q. Then started westward on Gervais back towards the horseshoe area?

A. Yes.

Q. Still in these relatively small groups, they started west?

A. Yes.

Q. Once they approached the horseshoe area, as a matter of fact, as they got to the horseshoe area the second time that is when you gave instructions to arrest them?

[fol. 172] A. No, that was when I informed their leader, David Carter, that they should be dispersed, that, in my judgment, the situation was becoming tense and then I asked him to instruct them that they were given fifteen minutes and then they should disperse.

Q. That's when each group was stopped again?

A. Yes, they had moved down on the sidewalk and stopped.

Q. But the various groups were stopped again, that's the second time they were stopped as they got back to the horseshoe area?

A. On that occasion, I wouldn't say they were stopped. They apparently stopped voluntarily. Now, Carter may have stopped them. I was adjacent to him.

Q. You certainly stopped Carter in the first group that he was leading at that time, didn't you?

A. Carter was not leading the group. Carter was also situated in the area where I was standing. He was moving back in that area. To my knowledge, he did not proceed through the State House Grounds with any group.

Q. At any rate, you gave him instructions to give to the groups of students?

A. Yes, I did.

Q. And, following your instructions, he then stopped the groups?

A. Each group.

Q. Here, again, if there were a congestion of the students, it came about at that time, isn't it true?

A. Yes.

Q. So, because of your interference there was this congestion which you now say you were trying to prevent, is that not right?

[fol. 173] A. That is not true. You are attempting to use words again which are not given the true connotation. As the lawful officer of the City of Columbia, as City Manager, I felt it my duty to see that this situation, as created by the students themselves, be dispersed for their safety and for the safety of the general public of Columbia. Now, I don't believe the word "interference" is at all a sound and useful word in this case.

Q. I have no quarrel with why you acted, no quarrel with that at all, I'm merely trying to get the results of your action and you have testified that they were approaching in relatively small groups and, after you gave certain instructions to be relayed to them, they were then stopped and the end result was the various groups lost their identity and commingled as one large group?

A. No, I'm not testifying to that at all.

Q. What are you saying?

A. I'm saying that they retained their identity in groups in that area, in small groups still, to the best of my knowledge, and then in those small groups, after being harangued, they burst into singing, shouting and stomping and so on.

Q. They still remain in small groups?

A. Relatively small groups but more closely bunched than in the past.

Q. Prior to the time when you gave your instructions to David Carter, there had been no singing or loud noises from the students, is that true?

A. Not to my knowledge. Again, these were out of ear shot, as far as I was concerned.

[fol. 174] Q: This stomping, which you have talked about, and shouting, prior to your giving instructions to David Carter, there had been none of that?

A. Again, not to my knowledge.

Q. So, that, to your knowledge, the groups of students, prior to this time, were orderly and peaceful?

A. Yes.

Q. All indications were that they would have continued to be orderly and peaceful had they not stopped David Carter and given him certain instructions to be relayed to them? Was that a normal thing?

A. That's purely conjectural on your part.

Q. Would you agree to that conjecture?

A. No. I have no idea whether they would have been or not.

Q. There was no evidence to the contrary, prior to that time, was there?

A. No evidence to the contrary in any other manner as to how they would react.

Q. Nevertheless, they had been peaceful and quiet prior to that time?

A. Yes.

Q. Now, would you care to state for the record what caused anxiety on your part for the safety of these students and for the safety of the general public?

A. Yes, I'd be quite willing to. As I observed the crowds gathering, both in the horseshoe area, on the State House Grounds, I would estimate that in addition to the students there were 200 to 250 people in the general horseshoe area. On the other side of Gervais, the two entrances to Main coming into Gervais, I would estimate that there were probably a like number beginning to congregate over there. [fol. 175] Traffic was being slowed up and becoming congested. I observed in the group around the area what I would describe as possible trouble making people and it was my judgment and remains my judgment that we might well, had the conditions been allowed to continue, were the students allowed to again march through the State House Grounds, had they been allowed to remain on the sidewalk area, we might well have had violence.

Q. You base that only on the fact that you saw trouble makers in the area,*potential trouble makers?

A. Not only saw trouble makers but I know that whenever you have a large group gathering, all that is necessary is one minor incident or one minor spark and this could have resulted in a real race riot in that area.

Q. Have you ever observed Armed Forces Day when there was a parade down Main Street and the large number of Whites and Negroes together there?

A. Yes, indeed.

Q. Did you expect any race riot then?

A. None whatsoever.

Q. Much larger groups than you had here so it wasn't the fact that you had Negroes and Whites there together that you were expecting a riot.

A. The facts were that you had these students and you had a congestion during the parades you have discussed when Negroes and Whites were mingling together with a common purpose; this was not a common purpose for which they were gathering on this day.

Q. Did you observe any placards which the students were carrying?

A. I did.

[fol. 176] Q. Would you care to say what the general tone or wording on the placards was?

A. I really can't remember what they were.

Q. Generally, would you say that those placards expressed some feelings or opinions in regards to certain conditions that existed?

A. Yes.

Q. Those conditions were conditions of segregation and discrimination as felt by the students?

A. As felt by the students.

Q. Is it not a fact that you feared violence because you feared there may be persons in the group who disagreed with the opinion expressed by those Negro students?

A. No, that wasn't the basis for my action. My fear was that there would be violence because of the feelings of many of the people in the groups against the demonstra-

tions themselves, not necessarily what they were protesting against.

Q. You don't mean that you feared there would be violence because of disagreement of certain persons in the area with the fact that there were Negro students in that area?

A. In the manner in which they were there. I'm sure that Negro students have gone through the State House Grounds over the years but not in this manner and not with the intent of collecting a crowd and demonstrating.

Q. And not with the evident intent of protesting against certain policies and practices? Would you also say that?

A. Yes.

[fol. 177] Q. Does it not follow that each potential trouble maker in the area perhaps also disagreed—

Mr. Coleman: If Your Honor please, I don't like to object. How could Mr. McNayr possibly know what thoughts were in the minds of the people in the crowd? We could go on forever with this. He has already stated that, thinking that the demonstration should be stopped after a long period of time, and going into a continuous line of questioning, which involves the thoughts of the people in the crowd, is just utterly ridiculous.

Mr. Jenkins: If Your Honor pleases, this witness is on cross examination, stating his reasons for making certain arrests and I'm merely questioning him as to his reasons and trying to find out what laid the basis for these arrests. We submit that, as an official of the government of the City of Columbia, being in charge of the Police Department, he has certain rights. He has the right to see that these conditions, which he thinks may have arisen, do not arise but certainly he cannot just form that opinion just out of a clear blue sky, so to speak. He must base it upon some knowledge which has come to his attention or some opinion which he may form and we submit that on cross examination we have a right to delve into these matters.

Mr. Coleman: If Your Honor please, may I say one more word? There is no objection whatever to counsel cross examining Mr. McNayr with regard to the reasons but he

is now asking Mr. McNayr to go into the minds of the crowd out there and tell us what that crowd was thinking. It's fantastic.

[fol. 178] The Court: The Court has previously overruled a few minutes ago that opinions be stricken from the record—

Mr. Jenkins: Before you rule, Your Honor, I should like to state this, the witness on the stand has testified, both in direct and on cross examination, that he acted to prevent certain occurrences which he thought may take place. His whole action was based upon thought. Now, thought based on what? He has not testified to any overt act on anybody in the crowd. He has testified that he acted because he thought they may do something and certainly I am bound to question him as to what gave him reasons to believe that these would take place.

The Court: The Court is of opinion that you can cross examine the witness but as to the opinions of other people, I believe that was your objection, that is sustained.

Q. It was testified, Mr. McNayr, that on occasions such as, the parade, I believe you were talking about, there were persons both White and Negro acting with a common purpose and everything was peaceful?

A. Yes.

Q. Do you mean to state now that whenever there is a common purpose, on the part of Negroes, that there are some Whites around, that violence will necessarily follow? You don't mean to say that, do you?

A. I'm afraid you're trying to twist the whole thing.

Q. Certainly, I'm not. I'm trying to get in the record what led to the arrest of these persons on that day and the arrest certainly interfered with certain rights which they had. That's what I'm trying to get out.

A. May I answer in my own words?

[fol. 179] Q. Certainly.

A. I think I have stated the reasons. There is in existence in this city, in this area, at the present time, well known to you and to these Negro students a feeling of tenseness in the racial situation. This was known to these students prior to their coming to town. I have discussed this with the

recognized leader, David Carter, on numerous occasions. They were fully aware of these conditions. They are fully aware of the fact that when a crowd gathers, such as gathered on this occasion, on the basis of this demonstration, that they are subjecting themselves to violence, as well as the people in the immediate area. Mr. Attorney, you know that as well as I do. Under these conditions, at high noon on that day, those people moving out of the State Offices, people going to lunch generally, the possibility of University students being let out at that time and coming through that area, I acted and I think I acted soundly and in the best interest of the citizens of Columbia and the students, and that is the basis for my action.

Mr. Jenkins: If Your Honor please, I did not stop Mr. McNayr when he was expressing opinions which I have and thoughts which I had and which these students on that day had and, in view of Your Honor's rulings, otherwise we respectfully submit that all of that answer should be stricken from the record because it was based strictly on conjecture as to what Mr. McNayr thinks and what I thought and what he thinks and what the public thinks.

Mr. Coleman: If Your Honor please, counsel has expressed some objection to something that is a technical [fol. 180] point. Are you objecting to the testimony which you drew out of the witness?

Mr. Jenkins: I still, if Your Honor please, move that the answer be stricken.

Mr. Coleman: If Your Honor please, this question was not asked by me on direct examination. Counsel asked the question. He could have objected at any time. I have never in my life heard of any procedure in any courtroom where counsel elicits an answer from a witness, listens to it without objection and then turns around and asks that the answer be stricken. To my knowledge, there's no such rule of law. I'd like to be educated to that.

The Court: Objection overruled.

Q. Would you acknowledge that the students on that day acted with a common purpose, the students that you arrested?

A. They were acting with a common purpose.

Q. Would you agree that their common purpose was to protest against what they considered racial discrimination?

A. Yes.

Q. Mr. McNayr, did you see any overt act on the part of any of these persons in the crowd which would tend towards violence?

A. No, I saw no overt act.

Q. Did you hear any remarks from any members of the crowd which would lead you to believe that there may be violence on the part of any of these students?

A. Not to my personal knowledge.

Q. Now, you have testified that you can identify some of the present defendants as having been involved in the [fol. 181] situation on March the 2nd, which led to the arrest of all of them?

A. Yes.

Q. There are, I believe, thirty-six defendants before the Court today. They are sitting generally on the first three or four rows of this area of the courtroom. (Indicating.)

A. Yes.

Q. Would you care to point out those defendants among this group that you recognize as having been involved in this situation on that day?

A. I cannot identify all of them by name. I can identify them as having seen them there.

Q. You can identify thirty odd of these defendants as you have a conscious recollection of having seen them on that day?

A. No, I did not testify in that manner at all. I have testified that out of this group I recognize two or three as having been there.

Q. I wonder if you would care to point out those two or three in this group that you recognize as having participated in the activities on the day in question?

A. Yes. I can point out David Carter, who is thoroughly familiar to me. He is smiling now. I can pick out the very young fellow in the back, second from the left, up there in the fourth row and I can pick out this fellow—well, I can pick out four or five. This young fellow sitting on the

front, on the left, and also I can pick out Williams, I believe he's a defendant this morning.

Q. Sitting near to Reverend Carter?

A. Oh, yes, he's sitting behind the other attorney.

[fol. 182] Q. That's about five or six. That's about three more than I thought you could.

A. I'm doing very well.

Q. Now, you have testified as to the activities of David Carter on that day. Now, would you care to testify as to what specific acts you saw these other persons doing that you were able to pick out?

A. The others were in these relatively small groups with the exception of--I can't recall whether Williams was in a group or whether he was something of Carter's Chief Lieutenant, and I believe he was moving around, maybe he was one of the Captains, I don't know.

Q. I think you know Reverend Carter and Williams quite well?

A. I do. I've seen a great deal of him and I've also seen Williams, too.

Q. Now, can you pick out Williams as having been singing and yelling and stomping his feet and shouting?

A. I don't think I can. Again, he was so active in carrying out instructions, I guess, that I can't identify him as being one of a group.

Q. Now, the other four or five students, can you point out specifically any acts of shouting, screaming, yelling?

A. On the part of those individuals?

Q. Yes.

A. No, I cannot.

Q. So, then, you cannot find any of these defendants as having done any of these specific acts which you have described, which led to the charge of breach of the peace on March the 2nd?

[fol. 183] A. Yes, I can, Carter.

Q. With the exception of Carter?

A. Very definitely, but the others I can only identify them as being in these various groups who did this sort of thing, but not as individuals.

Q. Insofar as the defendant Carter is concerned, the misconduct on his part was that he harangued, did you say?

A. He was a very active fellow that morning, in addition to organizing, keeping them all in line, issuing instructions, generally, to them upon my instructions to him, to have the group dispersed, then he proceeded with his harangue or whatever you wish to call it.

Q. I don't like that word "harangue", but I don't know a better word to use.

A. I think that describes it pretty well.

Q. I take no exception to that. Prior to that time, was David Carter apparently trying to keep the peace, to keep down confusion among the persons in his group? You say he was generally issuing instructions?

A. Yes. Again, if I may use my own words, these people came to the Grounds in orderly fashion. I've testified to this. They were reasonably well dressed. There was no profanity, no jeering. They had apparently been well instructed as to how they should behave. I assume that Dave Carter was seeing to it that they kept that way during this parade.

Q. That was the impression he gave you? A. That was the impression he gave me on this occasion and on previous occasions.

Q. The situation, then, so far as he and his group were concerned, got out of his hand after you had issued certain instructions?

[fol. 184] A. After I had told him that in my judgment the group must be dispersed and apparently that really set him off.

Q. You did not identify any of these defendants as having crowded anyone else off the sidewalk or having blocked any vehicular traffic?

A. Not as individuals, no, but on occasions they were filing back and forth across these areas and I'm certain some people were blocked out.

Q. There is, then, a possibility that some of these defendants may have been bystanders rather than active participants in the so-called gathering?

A. Oh, there is that possibility. Again, we have police arrest records, identification cards on each of these people. It would be impossible for me to identify these individuals.

Q. The records which you have are based only on records—in fact, they are the original records at the arrest of these individuals when they were carried down to City Jail?

A. Yes.

Q. Now, you, on that day, in this situation, you made no arrest of any one except these student defendants?

A. That's right.

Q. With the exception of one young man's name?

A. Yes, of my own knowledge, I knew nothing of the arrest of that boy, really, until very late in the evening.

Q. Frankly, you don't know whether he participated in the activities or not?

A. No, I don't. I never saw him, as a matter of fact.

Q. Now, with reference to some of these potential trouble makers, there was no arrest of any of them?

A. No, there was not.

[fol. 185] Q. Of your own knowledge, do you know of any of these Negro defendants in this group or other groups who you would call trouble makers?

A. Not in the sense that I was using the word previously. No.

Q. You don't know, of your own knowledge, of any instance when they have participated in any act of violence?

A. No.

Q. Do you know of any instance where they have urged any act of violence?

A. No, I do not.

Q. I believe you are generally familiar with the overall movement, as expressed by these defendants, throughout the City of Columbia for the past year?

A. I am quite familiar with it.

Q. Do you know, of your own knowledge, of any violence on the part of any of those Negro participants in those activities?

A. No, I do not.

Q. And would you say that these defendants are typical of the other persons involved in the same group, in your experience throughout the past year?

A. Yes, I would.

Mr. Jenkins: No further questions.

Redirect examination.

By Mr. Coleman:

Q. Counsel has very skillfully drawn from your part of your reasoning, part of the reasons behind your action in having to do with the arrest, which was that you feared possible violence there, but there was other testimony that you just gave as to the blocking of the streets and the sidewalks. Did these factors enter into your decision to stop the demonstration?

[fol. 186] A. Yes, they did.

Q. Materially?

A. Yes, very materially.

(Witness excused.)

The Court: We will take a five minute recess.

(Court reconvened.)

Whereupon, Mr. Coleman called JOSEPH BARNETT who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Coleman:

Q. Mr. Barnett, what is your full name, please?

A. Joseph P. Barnett.

Q. Are you a resident of Columbia?

A. I am.

Q. What is your occupation?

A. I am a Reporter for The State newspaper.

Q. Did you have occasion—

A. First, Mr. Coleman, I'd like to point out that I was subpoenaed to appear here today.

Q. Yes, you were subpoenaed by the Attorney General's Office, by me, is that correct?

A. That is correct.

Q. Did you have occasion on last March the 2nd, at any time during the day, to be in the vicinity of the State House grounds in the City of Columbia?

A. Yes, sir.

Q. At what time did you arrive, if you remember?

A. I arrived there probably at 12:35, probably 12:33 or 12:34 or 12:35.

Mr. Coleman: If Your Honor please, would counsel agree that I might refer to the group of students, here- [fol. 187] tofore identified, about which there has been testimony, without going into the full thing?

Mr. Jenkins: Go ahead.

Q. Did you see the group of students about which previous witnesses have testified on the grounds that day?

A. Yes, sir.

Q. Did you see any placards being carried by these students?

A. Yes, sir.

Q. Do you remember what any of the placards said or one or none at all?

A. Two of them stand out in my mind.

Q. I notice that you are using notes, Mr. Barnett. Were those notes made by you?

A. They were made by me. I was acting as a reporter at that time.

Q. Made by you at the time?

A. At the time. One girl, Negro girl, was carrying a plac which got my attention and I wrote it down. It said: "You may jail our bodies but not our souls".

Q. Do you remember any other placards?

A. There was another placard, of which I ordered a photograph to be taken, which said words similar to that about going to jail for freedom and I had a photograph of that placard made.

Q. At what point of time approximately, with reference to the arrival of these students on the State House grounds, did you observe the two signs, if you remember? Was it when they first got there or afterwards?

A. I can determine that very closely from my notes because my notes have times in them, and I wrote down

that placard "You may jail our bodies but not our souls" [fol. 188] within two or three minutes after I wrote down 12:35, and 12:35 was the time that this group arrived at the horseshoe for what ensued.

Q. Were you in and about the horseshoe the entire period of time in which the students were on the State House grounds?

A. I was. I left when a large group was marched off to the City Jail. I left in an automobile at that time.

Q. Did you observe the horseshoe area itself from time to time?

A. I was in it, around it, all over it.

Q. Would you describe the area with reference to the presence or absence of any large number of persons?

A. As has been previously testified, this was near lunch time and there were a lot of State employees there; there were a lot of shoppers and there was this large group, which I had previously counted down at Zion Baptist Church as being 188 in number, but I must have miscounted, but they were on the grounds, all in the horseshoe area, all at one time there. They were met at the entrance to the horseshoe as they came up from Zion Baptist Church and there were groups of them coming up as another group was coming around. They were all over the area there.

Q. Mr. Barnett, with regard to the presence or absence of any other persons who did not appear to be included in the student group, describe your observations as to them, if there were any?

A. I noticed over on the corners by the Carolina Life Building and by the Wade Hampton Hotel, I noticed that there were a number of white persons beginning to congregate. I noticed the traffic policeman, that the City Manager has testified to, had been placed in the intersection. [fol. 189] The automobiles were slowing down at the intersection and the monument, that is in the middle of the horseshoe, there were probably fifteen to twenty-five people standing on the little steps that lead up to the monument getting an overall view. There were State officials, police, State employees in the horseshoe area. There were many State employees up on the State House porch on both sides.

both the North Main Street and the South Main Street sides.

Q. With regard to the sidewalks along each side of the horseshoe and the lanes for vehicular traffic on each side of the monument, would you describe any persons, if there were any in those areas?

A. The parking lot itself was full with automobiles leaving very little space on the driving portion for people but there were people congregating there. There were persons congregating on the sidewalks themselves, just standing by watching.

Cross examination.

By Mr. Sampson:

Q. Mr. Barnett, did you notice any other signs, other than the two that you mentioned a moment ago?

A. I made an estimate, at the time, and I estimated that probably in these groups, there were probably three signs to a group of fifteen or twenty, which carried all sorts of slogans, some were big and some were small. They were all generally handwritten, looked like they had been made in a hurry.

Q. Did it have anything to do with discrimination or anything about that?

A. Oh, yes.

Q. Let me ask you this, sir. Were you present when the first case was tried on March the 7th, I believe, of this year? [fol. 190]

A. I was. The first case, I was present.

Q. Did I understand you to say that you are a newspaper reporter?

A. Right.

Q. What paper do you work for?

A. The State newspaper.

Q. Are you familiar with the policy of The State newspaper?

A. Generally, yes.

Q. Is it their policy generally to permit—

Mr. Coleman: If Your Honor please, that is entirely irrelevant and I object on that ground.

Q. I'll withdraw that. Did you or did you not write an article for this new paper having to do with this affair?

A. Yes.

Q. So the truth of the matter is you had a judgment before you appeared here now as a witness, a pre-judgment?

A. I am here to testify as to what I saw and observed. I have no pre-judgment.

Q. Isn't it fair to say that you had a pre-judgment of this matter because you had formed an opinion on it before you were subpoenaed to appear here as a witness? Isn't that right?

Mr. Coleman: If Your Honor please, I hate to keep interrupting but the witness has not attempted to qualify himself as an expert. He has given no opinion in the evidence. He has merely testified to the physical things that he saw there that day. I fail to follow the questioning on his judgment.

Mr. Sampson: May it please the Court, I understand what Mr. Coleman is objecting to but I'd like to remind him that this is cross examination and I have a perfect [fol. 191] right to ask him any question that might show a bias or a pre-formed opinion. It's on cross examination and this is a reporter and he wrote about it and we had a trial before he appeared here as a witness and I think it's perfectly competent to ask him whether or not he had any pre-judgment about this case before he appeared.

The Court: The witness has answered that he did not. Objection sustained.

Q. How long have you been a reporter in Columbia, Mr. Barnett?

A. I started with The State in 1945.

Q. 1945?

A. I took off three years for a little Army duty.

Q. You have had numerous occasions to observe the horseshoe area at the State House grounds, haven't you?

A. Many times.

Q. And would it be fair to say that you are familiar with the general traffic lights and signals in that area?

A. Yes.

Q. To your knowledge, they normally function perfectly, don't they, sir?

A. Yes.

Q. And, to your knowledge, I ask you whether or not on this particular occasion were they functioning normally?

A. That I can't say. To watch those lights there, you'd have to go about five different positions to see if they were functioning normally.

Q. You have no reason to believe that they were not functioning normally?

A. Oh, no.

Q. You're not a traffic expert, are you?

[fol. 132] A. No.

Q. Would it be reasonable to assume that the lights were functioning normally at the time you observed this group or crowd, as you say?

A. It would be reasonable.

Mr. Coleman: That calls for an assumption on the witness' part by the words of the question itself. I will stipulate that the traffic signals were working normally.

Mr. Sampson: At the time he was judging them? Is that right?

Mr. Coleman: Yes.

Q. I ask you again: you were present at the first trial, is that right?

A. Right.

Q. To the best of your recollection, did you or did you not or do you or do you not recall any witness for the State on that occasion saying that the traffic signals were not observed?

A. Were not observed by the motorist?

Q. That's right.

A. I generally remember somebody saying that traffic was not flowing at its normal rate, which would mean that they were not being observed, but that's an assumption on my part.

Q. The lights were not observed. By the way, this was at a lunch hour, wasn't it? This was during their lunch hour?

A. Right.

Q. This is a heavily travelled intersection, isn't it?

A. Right.

Q. Normally, the traffic is heavier then?

A. I presume it was just as normal as any other lunch hour.

[fol. 193] Q. Isn't it fair to say that the traffic at that time was normal for that particular area?

A. Probably so.

Q. Now, since you've been here since 1945, what is the largest crowd that you have observed on the State House grounds in this area?

A. I think that would be Vice-President Nixon's rally, if I'm not mistaken, at which he spoke.

Q. Last year?

A. Right. Prior to the election.

Q. You didn't have any breaches of the peace arising out of that, did you?

A. No, I think they had the Governor's permission to use the State House grounds.

Q. How large would you estimate that crowd to be, sir?

A. I don't remember exactly what it was. I flew over it in an airplane.

Q. Would you say the traffic was under control on that occasion, sir?

A. If I recall, the streets were blocked off at that time.

Q. Oh, I see. By the way, this parking lot which you observed as being full, isn't it true that that parking lot is normally full at that time of day?

A. With automobiles, yes.

Q. Now, let me ask you this, Mr. Barnett, do you recall having seen any of these particular defendants blocking the traffic or the sidewalks?

A. Oh, yes.

Q. Could you identify them?

A. Oh, yes.

Q. Would you care to identify them by pointing out and having them stand up?

[fol. 194] A. Well, I can identify Carter and his lieutenant or captain, Charles McDew, back there, the Reverend Glover.

Q. Any more?

A. By name, I think that's all I can recall right now, but by face, I think I could give you ten or twelve more.

Q. Now, I ask you, how were they blocking the sidewalks or the traffic?

A. They were blocking the sidewalks on two occasions that I recall; first, when they arrived at the State House and then after they had walked through the State House grounds, they blocked it again just across the horseshoe on Gervais.

Q. Did you observe any of these particular defendants doing that?

A. Oh, yes.

Q. Let me ask you this: when they arrived there, it is my recollection of the testimony that they were given permission to go around the State House grounds?

A. Right. They were given permission—this would be hearsay testimony but Mr. Walker told them they could go through the State House grounds once but—this is a direct quote from my notes—"walking around and around is a breach of the peace. You have no right to go on these grounds for demonstration". He told that to Charles McDew, who I understand is a defendant today, at 12:35. After he had told those words to Charles McDew, McDew then said "May I pass?"

Q. Other than the defendants which you named a moment ago, did you observe any of the others blocking traffic?

A. Like I say, on the two occasions when they first arrived then after they had walked through the State [fol. 195] House grounds, they sort of back-logged up there on the Gervais Street end.

Q. Did you observe them they were in groups and an officer was by each group?

A. Well, yes, that was generally after arrest that the officer was by them. They were still in groups, some large and some small, after arrest.

Q. You wouldn't say that they were blocking the traffic then in the custody of an officer?

A. Well, I think they were all generally lined up single

file and single file doesn't block the traffic of the State House walkways.

Mr. Sampson: That's all. Thank you.

Mr. Coleman: No further questions.

(Witness excused.)

Mr. Coleman: If Your Honor please, the State has three more witnesses, Mr. L. J. Campbell, Chief of Police of the City of Columbia, Mr. Dan F. Beckman, Assistant Chief of South Carolina Law Enforcement Division, Mr. A. C. Shorter, Jr., who is a member of the South Carolina Law Enforcement Division. These three men have testified at the two previous trials arising out of this occasion and, with Your Honor's permission, counsel has agreed to stipulate that their testimony here today would be substantially the same as their previous testimony, including testimony by Chief Campbell with regard to, I think, the vacation of the warrants, the names contained in those warrants being the names of persons arrested in the City of Columbia on last March 2nd and who were a part of the group of students. With Your Honor's permission, counsel will offer that testimony as stipulated testimony and I will ask Chief Campbell to take the stand for one question on cross examination.

[fol. 196] Mr. Jenkins: If it is agreeable with Your Honor, we will so stipulate.

The Court: All right.

Whereupon, Chief L. J. CAMPBELL was duly sworn and testified as follows:

Cross examination.

By Mr. Jenkins:

Q. Chief Campbell, would you identify, if any, every one of these particular defendants present today who committed any of the acts of blocking traffic, vehicular and pedestrian and otherwise committing a breach of the peace on March the 2nd, 1961?

A. Of course, I know a couple of them very personally, Dave Carter and Williams. Of course, the faces are familiar and I would say that they were in the group of the Negro students on March the 2nd.

Q. Are these two, whom you have named, those are the only ones that you can positively identify?

A. That I could swear that they were there, except as their names were called on the warrants and they appeared.

Mr. Jenkins: No further questions.

(Witness excused.)

Mr. Coleman: If Your Honor please, do you have a copy of the warrants of the previous trials?

The Court: I can get them.

Mr. Coleman: I thought possibly we should read in the record the trial that we had in mind. If Your Honor please, I should like to place in the record that, with regard to the stipulation of testimony, one of the trials to which reference is made and in which testimony was given by the three witnesses named was entitled The State [fol. 197] versus George Cleveland Foster, James Jerome Kirton, Isaac Washington, Roland Johnnie Rhames, Joseph B. Bailey, Isaac Jerome Campbell, David Green and Charles Fulton Barr, the trial of which case was held in this court room on Tuesday, March the 13th, and including also the first trial which arose out of this matter involving these defendants and other Negro students of the City of Columbia on March the 2nd, 1961. Is that agreeable?

Mr. Jenkins: The first trial was held on March 7th, 1961.

Mr. Coleman: One of the trials, the first, to which reference is made in this stipulation, was entitled The State versus James Edwards, Jr., Alvester Pate, Jr., Pinckney Moseley, Melvin Brown, Jr., Harold Eugene Nimmons, Willie Boykin Jones, William Perkins, Bill Alvin Sullivan, the trial of which was held in your court on March 7th, 1961. The State has no further evidence, Your Honor. If Your Honor please, we did agree that the other two witnesses would take the stand for this same question that was asked of Chief Campbell.

Whereupon, Mr. A. C. SHORTER, JR., was duly sworn and testified as follows:

Cross examination.

By Mr. Jenkins:

Q. Mr. Shorter, I want to ask you if you will identify any of the particular defendants on trial today who you remember having taken part in the activities on March the 2nd, 1961 and, if in the event you identify any of these defendants, as having done any of these specific [fol. 198] acts leading towards the charge of breach of the peace against them, you will state that also for the record?

A. I can identify David Carter, McDew, his first name I do not know offhand; I can pick him out if you like.

Q. These defendants are present?

A. McDew attends school in Orangeburg and he's on the third seat, back on the left. I can identify him as particularly breaching the peace. He led the first group and was very belligerent as he went around, wanting to go through the walkways, crisscross, in double file, which I asked him not to do. He stopped on each walkway and insisted that he do so. I told him he could go through single file, in smaller groups, that's McDew.

Q. I believe you also pointed out David Carter as having done specific acts.

A. You ask me if I knew any of them by name and I said I knew David Carter by name. I don't remember any specific act that David Carter did.

Q. Then, you know of no specific act that any of the other individual defendants did on that date?

A. I can't pick them out.

Mr. Jenkins: I have no further questions.

Mr. Coleman: No questions.

(Witness excused.)

Whereupon, Chief DAX F. BECKMAN was duly sworn and testified as follows:

Cross examination.

By Mr. Jenkins:

Q. Chief Beckman, I know in the beginning you will recognize at least two of the defendants on trial today. [fol. 199] Now, I ask you this question, if you will point out to the Court, each individual defendant here today that you can identify as having participated in the activities on March the 2nd, 1961 and state specifically what each of those that you identify did which led towards the charge of breach of the peace being placed against that individual?

A. Charles McDew, back there, and the young man sitting to his left, and the one with the patch over his eye. I recognize those three. Of course, I recognize David Carter and Williams.

Q. Now, then, are those all that you recognize?

A. I recognize this elderly man over here. Is he one of the defendants in here?

Q. What row?

A. In the first row, next to the end.

Q. I may be in error but I think you have reference to Reverend Glover.

A. That's perhaps the only one.

Q. The second part of my question was, Chief Beckman, if you will point out to the Court, specifically, what each of the persons you have identified did on March the 2nd which led to the charge of breach of the peace against him?

A. Of course, all of them were part of the overall group that participated in the general singing and stomping of the feet.

Q. Specifically, can you identify each of these persons as having stomped their feet and sung?

A. I saw McDew as he was coming through the circle.

Q. Tell us what McDew did?

A. That was shortly after Mr. McNayr gave them fifteen minutes to disperse, this group came through. I'd say [fol. 200] fifteen to twenty people in that group and I asked him if he wanted to disperse his group and go back, and

I spoke to the entire group and I told them that if they didn't go back, we would have to arrest them and charge them with breach of the peace and I had to get David—

Q. Let me ask you, did McDew go back?

A. No, he didn't.

Q. That's what McDew did? The fellow with the glasses on, tell me what he did?

A. He was in the group that I saw there. He was a party participant.

Q. Now, I believe, Captain Beckman, you have told what Charles McDew did and you have said that you didn't remember anything specific that Reverend Glover had done, you pointed out that you could recognize Anthony McFadden, he's the one who is seated immediately to the left of Charles McDew—

A. To my right?

Q. Yes. Specifically, what do you recognize him as doing?

A. He was a part of the over-all group that was arrested there that day.

Q. George Anderson is the man with the patch on his eye. What specifically did he do?

A. He was a part of the over-all group.

Mr. Jenkins: No further questions.

(Witness excused.)

Mr. Coleman: That completes the State's testimony, Your Honor.

DEFENDANTS' MOTIONS FOR DISMISSAL OF CASES, ETC.
AND DENIAL THEREOF

Mr. Jenkins: If Your Honor please, I'd like to make a couple of motions. No. 1, we move that the charge against each of these defendants be dismissed on the ground that the State has failed to establish the *corpus delicti*. The [fol. 201] 2nd motion is, we move that the charge against each of the defendants present this morning and on trial here today be dismissed on the ground that the State has

failed to prove a *prima facie* case. The 3rd motion for dismissal is upon the ground that by the arrest and prosecution of these defendants, each of them, the police powers of the State of South Carolina are being used to deprive each defendant of the right of freedom of assembly and freedom of speech guaranteed to each by the First Amendment to the United States Constitution and further secured to each by the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, the evidence of the State showing that, at the time of their arrest, these defendants were included in a peaceful, lawful assemblage of persons, orderly in every respect upon the public streets and properties of the State of South Carolina. These are the three motions for dismissal.

Mr. Coleman: If Your Honor pleases, the State opposes all three motions. Opposes, first, on the ground that there is ample evidence establishing the crime committed. There is ample evidence to establish the crime was committed by these defendants. I believe that would cover all of our objections.

The Court: All three motions denied.

Mr. Jenkins: At this time, may it please the Court, the defendants would like, with Your Honor's permission, for the record to show that, if these defendants before the Court today, were each placed on the stand, each would testify substantially, both on direct examination and on cross examination, the same as the witness and defendant, James Jerome Kirton, testified during the trial here before Your Honor on Tuesday of this week, Tuesday, March the 13th, 1961.

[fol. 202] Mr. Coleman: The State is agreeable to that.

The Court: All right.

Mr. Jenkins: Further, Your Honor, on behalf of the defendants, we should like to place on the stand just two witnesses, just a short examination.

Whereupon, Mr. Jenkins called REVEREND B. J. GLOVER, who, being first duly sworn, testified as follows:

Direct examination.

By Mr. Jenkins:

Q. You are the Reverend Benjamin J. Glover?

A. That's right.

Q. Reverend Glover, I know that you do not normally speak very loudly, but today would you raise your voice just a little bit so we can hear you clearly? You are a defendant today?

A. That's right, sir.

Q. Reverend Glover, will you tell to the Court, in your own words, what you know about the cause on March 2nd, 1961, leading to the arrest of these present defendants, your participation, if any, in the occurrence which led to your arrest, just in your own words?

A. I came to Columbia accompanied by several students from my area to a student meeting and, in that meeting, the students discussed, in part, racial discrimination as existed in South Carolina and particularly in Columbia. They also discussed the fact that the Legislators were in session, at that time, and decided to point out their feelings, as it relates to segregation, by a procession to the State Capitol. In that procession they walked orderly and peacefully and I feel that most of these students are peaceful, [fol. 203] to point out either a feeling of resentment or a feeling of that relation. I followed the group—

Q. May I interrupt you? Were you a part of what you characterized a procession?

A. I followed the group—yes, not as a student but as a person in any advisory capacity to some of the students, who were assigned to me as their parents permitted them to come because of my company. Certainly I had to see that they were protected or that they followed what I felt was the reasonable rights and, in doing so, they proceeded to the Capitol and, I might say, that they walked from the place where they assembled to the Capitol with no intention

of being arrested or molested or of violating a law. It was my understanding, from their discussion, that this was public property and they had a right; in fact, they asked me, the students that I brought with me, and I told them that I felt that it was public property and that they had a right, as a citizen, to move in a peaceful manner and at no time, I can say to this Court, did these students that I know about, were they disorderly or acting in a boisterous manner because every one that I know are Christians. I knew that they would behave according to certain ethical and moral codes. The group went to the State grounds, at least through the grounds, but in the group that I followed, we were stopped by an officer stating his position and I must confess that I was never able to make a second round and many of the other who followed, and they said "around and around", I've heard it testified here that it was a continuous situation, but the officer said that this was not the thing to do and certainly I wouldn't have done it, because on that particular day, by being arrested, and I certainly was arrested not knowing what I was arrested for, [fol. 204] I asked the officer but I was given no particular charge, and he repeated again "You are under arrest", and Your Honor, I certainly would have made arrangements to have been able to ride back to the jail because I walked further that day than I have in four years. I'm not permitted to walk more than three blocks. I certainly would not have gone there with the intention of being arrested with an idea of walking that far, but I went there only as an observer with the students, as they approached the State Capitol, and I would like for the Court to know that, to my knowledge, there was no singing or demonstration, as far as overt expressions were concerned, or actions, until after the arrest was made.

Q. Reverend Glover, did you pay any particular attention to the on-lookers, who perhaps were around that area?

A. Most of them, as I observed, some faces were smiling, perhaps a gesture of good faith, and on one occasion two or three persons approached with an intention of shaking hands and I believe one person was arrested on that account.

Q. Did you observe any indication on the part of any bystander—

Mr. Coleman: If Your Honor please, I ask that the remark of the witness be stricken, the one that had reference to other persons be arrested because they attempted to shake hands.

Mr. Jenkins: We will agree, if Your Honor, please, that that be stricken.

The Court: Strike it from the record.

Q. Reverend Glover, did you observe on the part of any of the by-standers any act or any conduct, which to [fol. 205] your mind, brought on a possibility of bodily harm to you or any of those persons under your charge?

A. I did not.

Q. Did you observe any of the persons, who took part in this expression that day, that any of these defendants who impeded, other than the use of the sidewalks?

A. I did not.

Q. Did you observe any of them creating a bottleneck in the vehicular traffic anywhere around where they were?

A. The only time that I noticed any obstruction of the traffic or the slowing up of movement, was when an officer spoke to us, either by the State or City or some person who identified himself as an officer or he wore the uniform of an officer, at that time, he stopped persons from saying something to them but the officer that stopped me stated that "You are under arrest" and, in questioning him, the groups began to come up and, if there was a congestion—however, in that particular instance, he stated that we must single file and the single file was to the outer side of the street, so, that, assuming that a person would be able to pass, and it certainly was not the acts of the students to violate or to hinder the traffic.

Q. You made some comment on the distance that you had walked and you had not walked that distance for some time. Would you state for what reason you have not walked?

A. I've been confined to the hospital with a muscular ailment.

Q. Do you think of anything further that you would like to say with regard to the incidents on that day?

[fol. 206] A. Attorney, the only thing I could possibly say is that there was no intention in the minds of the students—

Mr. Coleman: If Your Honor please, I object to his stating the intentions in the minds of the students.

A. There was no expression, as relates to arrest or a violation of a law, or at least the purpose for which I followed them was to show to the Legislators or other persons, with whom we might be able to converse, that there is a deep-seated resentment on this matter of racial inequalities and segregation and I felt that there was no better time or place to demonstrate it than on the Capitol, which is the center of our total policy makers.

Mr. Jenkins: I have no further questions.

Cross examination.

By Mr. Coleman:

Q. Reverend Glover, you walked from the Zion Baptist Church to the State House grounds?

A. I did.

Q. Did you inform any police officer about any physical disability of yourself?

A. I did not.

Q. You were there the entire period during which these students were on the State House grounds, with them?

A. Yes.

Q. For how long a period were they allowed to walk in and about the State House grounds?

A. I would say that it was in the area of fifteen to thirty minutes.

Q. Were you directing a group or did you have a supervisory capacity over them that day?

[fol. 207] A. No, supervisor, except for the young people I brought with me.

Q. You were, though, a part of the over-all group that was conducting the demonstration? You are not a student. I understand that, but you were a part of the group, is that correct?

A. Yes, I became involved.

Q. Do you not think that a reasonable time was given to you and the other students in which to express whatever you wanted to express that day?

A. No, I feel that a person expressing a resentment or any feeling has to be guided by his conscience.

Q. How long or do you know how long you would have stayed there had there been no acts on the part of the police officers?

A. That would be determined by the conscience of the group of the individual.

Q. Then, you are saying that there would be no limit, is that correct?

A. Conscience always has a limit, sir.

Q. What is it in your case?

A. In my case—

Q. As to the demonstration?

A. That I am unable to tell. We did not have an opportunity to let conscience be the guide.

Q. You have stated that you felt that you and the others had the right to go upon the State House grounds. Testimony has shown that you were allowed to go on the State House grounds. Did you see anything of the other factors which the testimony has shown were involved in this case? Such as, the gathering of a crowd of on-lookers, the impeding of traffic on the sidewalks, the impeding of vehicular [fol. 208] traffic on the lanes around the horseshoe and on Gervais Street, did you observe any of that?

A. I did not observe any abnormal impediment until the time that the group—it was stated that we were under arrest and the line of the procession stopped moving because of the statement made by the officer.

Q. Do you remember whether or not there were any or none or many people, other than the students, in the horseshoe when you first arrived there?

A. To be frank, sir, I did not notice any unusual number.

Q. At that time?

A. At that time.

Q. Did you notice any unusual number immediately prior to the time when the arrests were made?

A. When the officers stopped the group that I was following, there appeared to be individuals coming near, such as reporters or officers, as I can remember, and perhaps civilians but the point that I would like for the Court to remember is that, as far as I was concerned, there was no unusual congregation or persons until after the arrests were made.

Q. After the arrests? All right. You have stated that you felt and the reason you went there was that every person has a right to walk in and about the State House grounds and demonstrate, is that right?

A. I don't think I used the word demonstrate.

Q. What term did you use?

A. I said I thought every person had the right to point out his feelings in the manner as the young people were participating.

Q. Do you think that that right extends to a large group of two hundred people?

[fol. 209] A. Yes, as individuals, and I believe that the group—at least I acted as an individual because I chose to follow them.

Q. You were acting in concert, were you not?

A. Yes.

Q. If it's all right for a group of two hundred, would it be all right for a group of four hundred?

A. It would be all right, if they acted under the same circumstances under which we acted.

Q. Would it be all right for a group of ten thousand?

A. I haven't ever assembled ten thousand.

Q. You have stated what your beliefs were as to your rights, I'm merely trying to reach the point where you think something maybe could be done to control it. Is there such a limit in your mind?

A. A limit to action?

Q. A limit to the number of persons which might act in concert and demonstrate on a public place?

A. When you come to the truth, everybody should be convinced of the truth.

Q. I didn't understand you.

A. When it comes to truth, everyone should be—it is my belief and I spend my whole life trying to advocate truth and righteousness.

Q. I'm in favor of truth also, but that does not answer my question. Is it your position that any number, an unlimited number of people, acting in concert, might parade in and about a public place for more than an hour without any interference, for whatever reason, would that be in violation of constitutional rights?

A. Would you mind my asking just one question to clarify an answer?

Q. All right.

[fol. 210] A. Are you saying that the group demonstrated more than an hour at the Capitol?

Q. Oh, no. I'll tie it to the exact period of time.

A. That would depend on the circumstances.

Q. What circumstances?

A. What's involved.

Q. You say it would depend on the circumstances? What circumstances might be involved? Do you think congestion of traffic might come into it, along the public streets?

A. Oh, no.

Q. You do not? I thank you for that answer. Do you feel that this group of students were arrested because they were Negroes only? Do you feel that there was no other reason for their arrest? You were one of the leaders, you were one of the advisers, do you feel that way?

A. The only point that I could possibly see that they were arrested, I feel that there was no violation as to their rights. You would have to ask the person who signed the warrants for their arrest as to the reasons we were arrested.

Q. All right. Did you know that it is a matter of common knowledge that a group of people wishing to bring the Evangelist Billy Graham to the State House grounds were refused such permission?

Mr. Jenkins: If Your Honor please, we realize this is cross examination, I dislike to interrupt counsel but the question does not seem pertinent to the issue before the Court at this time.

Mr. Coleman: Normally, I would agree that it was not pertinent but throughout all of these trials there's been innuendoes, there's been inference, there's been direct testimony that these people, these students were arrested [fol. 211] because they were Negroes. I see no reason why the State cannot show, if they can upon cross examination, that other groups, which had no identification with the Negro race, have been refused repeatedly the use of the State House grounds for purposes of rallies, demonstrations or things of that sort.

Mr. Jenkins: If Your Honor please, the defense has advanced no reason, to my recollection, as to why these defendants were arrested and I may further point out that in the first trial, in the series of cases, effort was made on behalf of the defense to question police officials with reference to a rally which took place as the result of the cancellation of the speaking engagement of Mr. Nixon and the State vehemently opposed such questioning and Your Honor ruled it as having nothing to do with the case at issue. I repeat my objection and I think we are going far afield to question this witness with respect to action taken by the Police Department with reference to other assemblages in or about the State House grounds.

Mr. Coleman: If Your Honor please, I'd like to remind both the Court and counsel that the defense counsel brought out from a State witness here in this trial today testimony with regard to the Nixon speech held on the State House grounds without my objection.

The Court: Objection overruled.

Q. If you don't know of it, just say so. Do you want me to repeat the question?

A. Please.

Q. Do you know that it is common knowledge that a group of persons attempting to get permission to have the Evangelist Billy Graham come to Columbia and stage a rally on the State House grounds was refused?

[fol. 212] A. Yes, I have that knowledge but I'd like to add that the student procession was not classified as a rally.

Q. Well, not by you. It was classified as a demonstration. Is that correct?

A. Yes.

Q. Do you know that it's common knowledge that an organization, properly known as the Klu Klux Klan, has been refused upon many occasions the use of the State House grounds for purposes of a rally or a demonstration or anything of that nature?

A. I believe that's true.

Q. Then, with that information, how can you possibly conclude that this action was taken against the people merely because they were Negroes?

Mr. Jenkins: If Your Honor please, I do not believe this witness has testified that this action was taken against him or any other defendant because they were Negroes.

Mr. Coleman: I withdraw the question. No more question.

The Court: The Court would like to get something clarified in his own mind. Reverend Glover, I sympathize with the muscular trouble that you are having, but you testified that you were not permitted to walk but three blocks and then you testified that you had walked from Zion Baptist Church down to the Capitol Building. If I'm not mistaken, that's about six blocks. How did that happen, if you're not supposed to walk but three blocks?

A. Your Honor, I would like to make this statement. I intended to have stated that I have not walked more than three blocks in approximately four years. I did not say—the thing that I wanted clear was the fact that I had been [fol. 213] advised not to over-exercise and, during that period, I had not walked more than three blocks at any continuous walking, at one time and, when I left Zion Church, I really didn't know that the State House was that far. When I started walking, it was an opinion as to how I felt or as to whether I would continue to walk. After getting to the Capitol grounds and being arrested, I had to walk whether I wanted to or not.

The Court: How many times have you been here in Columbia, Reverend Glover?

A. Numbers of times.

The Court: You weren't familiar with where the Capitol Building was located with reference to Zion Church?

A. No, sir.

The Court: I see.

Redirect examination.

Mr. Jenkins: I should like to ask the witness one question.

Q. You said, Reverend Glover, that you did know something about permission being refused Billy Graham to hold a meeting here on the State House grounds?

A. Yes.

Q. Do you know that the reason for that was that it would be an integrated meeting?

A. Yes.

Recross examination.

By Mr. Coleman:

Q. I believe you answered my question with regard to permission sought by the Klu Klux Klan for such a demonstration, you did know that, and it's common knowledge that such groups have been refused permission to use the grounds?

A. Yes.

[fol. 214] Q. Would the Klu Klux Klan have been an integrated meeting?

A. I don't know.

Q. It is common knowledge—you said it was common knowledge that the Billy Graham meeting might be integrated?

A. Yes, it was.

Q. Would the same apply to the Klu Klux Klan meeting?

A. No, it would not.

Q. Yet they were also refused permission, is that correct?

A. Yes.

Mr. Coleman: Thank you.

(Witness excused.)

The Court: The Court will recess until 2:30 o'clock for lunch.

(Afternoon session.)

Mr. Jenkins: If Your Honor pleases, the defense does not, at this time, propose to put any further witnesses on the stand. We have concluded our case other than we have a few motions, at this time, that we would like to make.

DEFENDANTS' MOTIONS FOR DISMISSAL OF CASES, ETC.
AND DENIAL THEREOF

(At this time, the defendants move for a dismissal of the charges against them, and each of them, on the same grounds as heretofore set forth and we respectfully request that the record would show that these three motions have been made, as though set out word for word at this time.

The Court: It is so ordered.

(The motions are denied.)

Mr. Coleman: Nothing further from the State.

Mr. Jenkins: Nothing further from the defendants.

The Court: Any closing remarks?

[fol. 215] Mr. Jenkins: Insofar as the defendants are concerned, we do not at this time care to make any argument whatsoever, following whatever ruling Your Honor may make with reference to the cases, we may have something further to say then.

Mr. Coleman: The State has no argument at this time.

SENTENCE

The Court: The Court would like for all of the defendants to stand in front of the Bench with no particular reference as to order.

(Defendants arraigned before the Bench.)

The Court: The Court finds you guilty as charged for breach of the peace. Would the attorneys like to say anything before I sentence them?

Mr. Jenkins: If your Honor please, we have been through similar trials on two occasions. The same remarks, which we have previously made, you are familiar with and I do not believe it is for any good purpose to further delay these proceedings, therefore, we have nothing further to say.

Mr. Coleman: Nothing further.

The Court: I would like for each of you defendants who have not reached your 17th birthday to please raise your hands (eight hands raised), and I want you to come over here (indicating the left side of the court room in front of Bench). What is your name?

A. Delbert Leon Woods.

The Court: Next, and on down the line.

A. Isaac Williams, Alfred Odell Lemon, Robert Henry LaPrince, Wilbur Harrison Walker, William H. Cooley, James William Cantey, Clifford B. Bell.

The Court: How old are you, Delbert Woods?

A. Sixteen.

The Court: Where are you from?

A. Charleston.

fol. 216] The Court: Do you go to school?

A. Yes, sir.

The Court: What school?

A. Tenth grade.

The Court: Next one. What grade are you?

A. Tenth grade.

The Court: Where do you go to school?

A. Charleston.

The Court: Your name is what?

A. Isaac Williams.

The Court: Next?

A. I'm sixteen, Tenth Grade, Sterling High School, Greenville, Alfred Odell Lemon.

The Court: Next.

A. Robert LaPrinee, Kirk High School, Charleston, 16 years old.

The Court: Next.

A. Sixteen, Tenth Grade, Greenville, South Carolina, Wilbur Harrison Walker.

The Court: Next.

A. Sixteen, Eleventh Grade, Greenville, South Carolina, William Cooley.

The Court: Next.

A. James William Cantey, Sixteen, Eleventh Grade, Columbia.

The Court: Next.

A. Clifford Bell, Sixteen, Senior, Mathis Academy.

The Court: I have given considerable thought to the matters of young people working, young people violating the laws and I have devoted most of my life trying to help and trying to lead them in the right direction. Regardless of any we may do something or why we may be led into something is only something that you in your own heart can justify. The Court certainly is going to take notice of the fact that you are not just minors, but you are really children. [fol. 217] dren. Some day you will grow up to be a grown man and have problems that we, ourselves, are faced with right now. I just hope that when you become a man that you won't use children to fight your battles or my battles, as you have been used.

The Court fines each one of you eight -the minimum under the law, \$10.00 or five days in jail. Now, if you eight will sit down over there, we can proceed.

Next, I would like for the defendants from seventeen up to twenty-one years old to stand over on this side. (Defendants line up as directed.)

The Court: None of you have reached your twenty-first birthday?

A. No. (In unison.)

The Court: What is your name?

A. Anthony McFadden.

The Court: Your name?

A. Clifford James Rice.

The Court: Next—

A. Sinclair Salters.

A. Hezikah Johnson.

A. James Allen Carter.

A. Thomas D. Hornsby.

A. Henry Williams.

A. Maxine Epps.

A. Frank E. Gore.

A. George A. Anderson.

A. Arthur Whitfield Stanley, Jr.

A. Earl Peters, Jr.

A. Wendell Dailey.

The Court: To each of you thirteen defendants, the sentence of the Court is \$100.00 or thirty days in jail. I'm going to suspend half of that upon payment of a \$50.00 fine. Take your seats, please.

[fol. 218] Mr. Jenkins: In his absence, William from Camden, 17 years of age; also James Clyburn, I do not know his age but I understand he is less than twenty-one; he is twenty years of age. He, also, is one of those tried in his absence.

The Court: All right.

Mr. Jenkins. I'm just wondering whether or not the sentence you have meted out to these others applied, as

far as these two persons are concerned, pending your checking their ages?

The Court: That's right. It certainly will. For the other thirteen defendants, the Court has absolutely no sympathy because each one of you are grown men, who have led children to the point where now they have a record, a police record. To get children to fight your battles and my battles is unheard of in a decent civilization.

The Court fines each one of you \$100.00 or thirty days in County Jail.

Mr. Jenkins: If Your Honor please, at this time, on behalf of all of the defendants, we move for arrest of judgment or, in the alternative, for a new trial based upon the motions made previously for a dismissal of the actions and we respectfully request that rather than spelling them out word for word, at this time, that the record will show the same as though we had repeated those motions again.

The Court: The records will show that.

(Motions denied.)

Mr. Jenkins: Now, then, at this time, if the Court pleases, we serve notice of intention to appeal within the statutory time. We will file with the Court written notice along with exceptions. We would further request that the Court would [fol. 219] set appeal bonds in each case.

The Court: The appeal bond for each one that has just been tried and found guilty will be \$100.00.

The Court would like, before we adjourn, to say, with reference to the young people under twenty-one, it is customary with me, if they come back before me the second time, it would show that they have a complete disregard for the law and justice as we know it, and the Court will not look upon their age as a factor with any future sentences you might have.

Mr. Jenkins: That's all, Your Honor.

The Court: The court will be adjourned until Monday, March the 27th, when we will try the remaining 137 defendants who are charged in this particular case.

(Court adjourned.)

Reporter's Certificate to foregoing transcript (omitted in printing).

Transcript of Testimony

Before Honorable Frank Powell, Magistrate, on Monday, March 27, 1961, Court Room at Columbia Police Headquarters, Columbia, South Carolina.

APPEARANCES:

For the State: J. C. Coleman, Esq.

For the Defendants: Lincoln C. Jenkins, Jr., Esq., Matthew J. Perry, Esq., Donald James Sampson, Esq.

The Court: I would like to announce the rules of the Court. There will be no pictures taken within the court-[fol. 220] room at any time, of any type. As many people who like may attend the hearing this morning, if they have a seat, but no one will be allowed to stand up around the walls. Any outburst of any type will not be tolerated and the court will take into consideration, if this happens, that the members present will be in contempt of court.

The Court has before it a warrant charging the following persons with the crime of breach of the peace:

Mr. Perry: May it please the Court, I wonder if it wouldn't expedite matters to have the defendants stand and indicate whether they are present as you read the names.

The Court: Yes. As I call out the names, as each name is called, will you stand up and indicate whether you are here or not. Answer "Present" loud and clear when you stand up.

Betty Jean Capers—Present.

Minnie DeWitt—Present.

Dorris D. Wright—Present.

Dee Anne Anderson—Present.

Mary Norris—Present.

Rhunett Lindsey—Present.

Juanita Hall—Present.

Bettie Jean King—Present.

Benzer Inabinett—Present.

Carrie May Kelly—Present.

Hazel Yvonne Newberry—Present.
 Betty Jean Lindsay—Present.
 Sarah Elizabeth McKenzie—Present.
 Mattie Thomas—Present.
 Queen Ester Rush—Present.
 Choncie Mae Drayton—Present.
 [fol. 221] Ottie Ruth Jarrott—Present.
 Dorothy Helen Robinson—Present.
 Mary Louise English—Present.
 Willie Oma Jamison—Present.
 Bobbie Jeane Giles—Present.
 Irene O'Neal Giles—Present.
 Felicia Yvonne Young—Present.
 Leola Clements—Present.
 Gertrude Smith—Present.
 Katherine Duncan—Present.
 Marion Jeanette Johnson—Absent.
 Jeanette Louise Hartwell—Present.
 Mary Elizabeth Ellison—Present.
 Junius Leverne Reed—Present.
 James K. Davis—Present.
 Leonard Lewis McCants—Present.
 Mario Davis—Present.
 Sammie Pringle—Present.
 Clinton Warren Hazzard—Present.
 Robert McTeer—Present.
 James Kenneth Alford—Present.
 Gwendolyn Watson—Present.
 Yvonne Redd—Present.
 Frances McDaniel—Present.
 John Land—Present.
 Hallain Sizer—Present.
 Kate Lewis—Present.
 Willie Evelyn Grant—Present.
 Frances Elizabeth Johnson—Present.
 Evelyn Bing—Present.
 Shirley Ann King—Present.
 Alethia Brown—Present.
 Rebecca Williams—Present.
 Mary Doe—Present.
 [fol. 222] Albertine Myrtis Coney—Present.

Yvonne J. Goodloe—Present.
 Brenda Janet Burton—Present.
 Barbara Ann Mack—Present.
 Judith Delores Smith—Absent.
 Emma Jean Jones—Present.
 Evelyn L. Robinson—Present.
 Julius Duke Moses—Present.
 Janet Louise Black—Present.
 Juanita Waddell—Present.
 Justine Simmons—Present.
 Bettye Jean Machack—Present.
 Mattie M. Giles—Present.
 Annette Edwards—Present.
 Betty Jean Wilson—Present.
 Amanda Townsend—Present.
 Novel Nowlin—Present.
 Barbara Early—Present.
 Louvenia Griggs—Present.
 Gertrude Evans—Present.
 Shirley A. Greene—Present.
 Annie Mae Ray—Present.
 Loretta Gertrude Bush—Present.
 Bettie Jean Brown—Present.
 Gloria Jean Jefferson—Present.
 Rosalee Hines—Present.
 Edith Jenkins—Present.
 Florence Smalls—Present.
 Mary Lou Sullivan—Present.
Rae L. Jones—Present.
 Lucy Davis—Present.
 Jenny Lou Davis—Present.
 Myrtle L. Walker—Present.
 Patricia Green—Present.
 [fol. 223] Frederick E. Hart—Absent.
 Margaret A. McCray—Present.
 Rupert Hickman—Present.
 Herbert Lawrence Wilson—Present.
 Bernard Haire—Present.
 Leon Bryant—Present.
 Donald Jerome Salters—Present.

Frederick Paul Padgett—Present.

Robert Lee McBeth—Present.

Louie Lighty—Absent.

Mr. Jenkins: Louie Lighty is the one who had to report to his Draft Board this morning.

The Court:

Floyd Alvin Gilmore—Present.

McArthur Juke Bishop—Present.

Charlie Flemming—Present.

Joe Louis Robinson—Present.

John Josiah Campbell—Present.

I. D. Newman—Present.

Harold Foster—Absent.

Mr. Perry: Harold Foster is from Spartanburg and I think he is on a trip from his school, either in Washington or New York.

The Court:

Jimmy Norz Moore—Present.

Jessie Alfreda Lockhart—Present.

Barbara Ann Cureton—Present.

Sarah Ann Wharton—Present.

Dianne Gwendolyn Blassingame—Present.

Sophia Pearl Lester—Present.

Laverne Durant—Present.

Bettye Jean Wideman—Present.

William T. Robinson—Present.

William Theodore Boggs—Present.

[fol. 224] Henry Earl Thomas—Present.

James Edward Coleman—Present.

Bernard Nathaniel Riggins—Present.

Horace Nash—Present.

John Wesley Miller—Present.

Mark A. Williams—Present.

Clarence Missouri—Present.

Carl Edward Brook—Present.

Classie R. Walker—Present.

Robbie Jean Young—Present.

Regina Shirley Ann Caldwell—Present.

Bookertee McLeod—Present.

Claude E. Moore—Present.

John I. Witherspoon—Present.

Matthew Williams—Present.

Harold Bardonvilli—Present.

Travis Simon—Present.

Shellie Stroman—Present.

Willie Paul Worthy—Present.

Robert Ferguson—Present.

Albert Orage—Present.

John Sawyer—Present.

Glenn Manning—Present.

Kennedy Claffin—Present.

John Frederick—Present.

Bobby D. Doctor—Present.

The Court: Defendants be seated. Are these persons represented by counsel?

Mr. Jenkins: They are all represented by counsel.

The Court: How about Frederick Hart? Is he represented by counsel?

Mr. Jenkins: He is not represented by counsel here.

The Court: (To Bailiff) Go outside and cry out his name three times and report back to me.

[fol. 225] Mr. Jenkins: If Your Honor please, the following defendants, while not physically present in court this morning are present by counsel: Dee Anne Anderson, Marion Jeanette Johnson, Judith Delores Smith, Louie Lighty, Harold Foster, Paul Doctor, and it is agreed that these persons, though absent, are represented by counsel and will be bound by whatever rules and decisions are made by the Court this morning.

The Court: Mr. Bailiff?

Bailiff: No response, Your Honor.

The Court: The Court would like to have it in the record that attempt has been made, the Bailiff cried out the name of Frederick Hart three times outside of the courtroom; he is not present and is not represented by an attorney. The Court has also written the father of this boy last week informing him, as a courtesy, of the hearing to be held here this morning at 10:00 o'clock, to which the Court did not receive a reply. The Court will try Frederick E. Hart in his absence this morning.

Mr. Coleman: If Your Honor please, may we move to sever the trial of Frederick Hart?

Mr. Jenkins: We will so agree, and we would ask that the record show that the defendant Hart will be severed from the other defendants in the trial this morning.

The Court: It is agreed. Without the necessity of going back and calling out the names of each one of you, whom I have just called out, each one of the one hundred and thirty and some odd, who was present before me now, you have been charged on a warrant, to-wit: "Personally appeared before me, Frank Powell, Magistrate of the said County and said State, L. J. Campbell who, being duly sworn, says that Bookertee McLeod, Pauline Moore and [fol. 226] others, before me now, at Columbia, South Carolina, on March 2nd, 1961 on the State Capitol Grounds and on adjacent sidewalks and streets did commit a breach of the peace in that they, together with a large group of people, did assemble, impede the normal traffic, sing and parade with placards, failed to disperse upon lawful orders of police officers, all of which tended directly to immediate violence and breach of the peace in view of existing conditions. Signed, L. J. Campbell. Sworn to before me this 2nd day of March, 1961. Frank Powell, Columbia Magistrate." The Court also would like it entered into the record that each one of you on March the 2nd, when the warrants were taken out, was read the charge individually by me to you, including those who are absent today, Frederick E. Hart and others.

Are you the persons just called and were you released on bond on a charge of the breach of the peace to appear in court today?

Mr. Perry: The defendants will answer that question in the affirmative by counsel.

The Court: How do you plead?

Mr. Perry: Each of the defendants pleads Not Guilty.

The Court: Is the defense ready for trial?

Mr. Perry: The defense is ready.

The Court: Is the State ready for trial?

Mr. Coleman: The State is ready. Your Honor, at this time, I wish to announce to the Court that counsel for the

defendants and counsel for the State has stipulated, if it please the Court to accept such stipulation, that the testimony, which would be offered here today and the witnesses who would appear here today, are the same witnesses that have appeared in a trial in your Court last March the [fol. 227] 16th. If Your Honor please, may I look at the docket?

The Court: Yes.

Mr. Coleman: That trial being entitled State against James C. West, Sinclair Saffers, Hezekiah Johnson, James Clyburn, William Moultrie, David Carter, Benjamin James Glover, Samuel S. Williams, Arthur W. Stanley, Jr., Wendell Dailey, Lennie William Glover, Samuel Edwards, David Lawrence Perrett, James Allen Carter, Clifford James Rice, Delbert Leon Woods, Alfred Odell Lemon, Wilbur Harrison Walker, James W. Cantey, Isaac W. Williams, Clifford B. Bell, William H. Cooley, Robert Henry LaPrince, Frank E. Gore, Earl Peters, Jr., Henry H. Harris, Charles R. Miller, Charles McDew, Maxine Epps, Henry Williams, Leroy Hogans, Jimmy Lee Smith, James Reeder, Jr., George Allen Anderson, Thomas D. Hornsby, Anthony McFadden, being the intention of counsel to stipulate that the same witnesses for both the State and the defense would be presented here today and that the evidence given by those same witnesses at the trial previously identified, which took place in your court last March the 16th, would be substantially the same if they were presented here today, including testimony by Chief Campbell, that the names appearing on the warrants, which you have just read, were the names given to the Police Station here in Columbia by persons who were engaged in certain demonstrations on the State House Grounds last March the 2nd and who were arrested on charge of breach of the peace that day. The State is also stipulating that recognizance bonds posted for these defendants would be offered in evidence and will be placed in evidence by stipulation. [fol. 228] Mr. Perry: May it please the Court, the defendants will agree to the stipulation as stated by counsel for the State, with the exception that the defendants would like also to have the testimony, which was received by the Court in the very first trial, the date of which has

escaped me at this moment, wherever it is deemed applicable to be considered, also as a part of this stipulation. In other words, I understand that we have had three trials and where applicable the testimony which was offered in all of the preceding trials would be included in the stipulation, which has just been stated.

* Mr. Coleman: That's agreed.

The Court: The Court agrees and it is so ordered.

Mr. Perry: Particularly emphasizing each of the preceding trial as a part of that stipulation.

Mr. Coleman: It is agreed.

Mr. Perry: At this time, may it please the Court, the defendants respectfully move for a dismissal of the cases pending against them upon all the grounds previously noted in the several trials, which have been held before Your Honor. We will omit any argument on those motions and we ask that you consider them and make ruling on them at this time.

Mr. Coleman: The State opposes the motions upon the same grounds as was set forth in previous trials.

The Court: Motions denied.

Mr. Perry: At this time, may it please the Court, the defendants offer to stipulate that if they offer evidence in this trial, that the testimony, which was adduced in the two previous trials, to wit: the trial on March 13th and the trial on March 16th, which was held before Your Honor, that the testimony, which would be presented on behalf of the defendants, would be substantially the same as was the [fol. 229] testimony offered in the trials of March 13 and March 16.

Mr. Coleman: We agree.

The Court: It is so ordered.

DEFENDANTS' MOTIONS FOR DISMISSAL OF CASES, ETC., AND DENIAL THEREOF

Mr. Perry: The defendants hereupon renew all motions for dismissal upon the same grounds as previously noted.

Mr. Coleman: The State opposes the motions upon the same grounds.

The Court: Motions denied.

Mr. Perry: Your Honor, I believe you will see fit at this time to make your findings.

The Court: The Court will have a five minute recess and I'd like for the State's attorney and the defense attorneys to come back in the Chambers.

(Recess.)

The Court: The Court finds each one of you guilty as charged with the crime of breach of the peace.

The Court wants each person who has not as yet reached his Seventeenth birthday to stand. Horace Nash, Judith Smith—

Mr. Perry: She's absent.

SENTENCE

The Court: Emma Jean Jones, Katherine Duncan, Jessie Lockhart, Barbara Ann Curston, Sarah Ann Wharton, Dianne Blasingame, Brenda Janet Burton, F. P. Padgett, James Alford, Carl E. Brooks, Rebecca Williams, Leonard McCants. The sentence of the Court to each of you standing here and for the one absent—the Court has taken into consideration your youth this time—and is going to fine you the minimum under the law, \$10.00 or five days in jail. I want to caution you now, however, if you should come back before this court again, that your youth will not be taken into consideration. Be seated.

[fol. 230] All of those who are twenty one years or older stand: Patricia Green—this is those who were twenty-one as of March 2nd of this year—Barbara Giles, John Campbell, DeQuincy Newman, Clarence Missouri, Albert Orage, Mattie Thomas, Harold Bardonville, Jr., Herbert Wilson, Rupert Hickman, Matthew Williams, John Frederick, John Land, Shellie Stroman, Bookertee McLeod, Donald Jerome Sakers, Evelyn Robinson, Barbara Early, Betty Jean Mashack, Irene O'Neal Giles. The Court will check the ages of each one of you, the twenty, I believe, that have just stood up. For you twenty, the Court has absolutely no sympathy whatever. The Court sentences you to \$100.00 fine or thirty days in jail. Be seated.

The remainder of you stand up. To each of you, the Court sentences you to \$100.00 fine or thirty days in jail. I'm going to suspend half of that on a payment of a fine of \$50.00. To each one of you, I repeat, that, if you should come back before this Court on any matter, your youth will not be taken into consideration and the Court cannot emphasize enough the fact that once you reach twenty-one years old, whether you intend it or not, you become a man and a woman in the State of South Carolina and must accept the responsibilities of a man and a woman. There's a law in the State of South Carolina that no person over twenty-one can interfere whatsoever with a child or a minor, which is under twenty-one years old, if that minor or any law is violated. I hope that you will take this into consideration and realize the seriousness of how close some of you came to getting into very serious trouble.

Mr. Perry: May it please the Court, at this time the defendants all move for arrest of judgment or in its alternative for a new trial. This motion is based upon all [fol. 231] grounds previously noted in the several motions for dismissal in former trials. I will omit any argument thereon.

Mr. Coleman: If Your Honor please, the State opposes the motion upon the grounds set forth in the previous trials.

The Court: Motion denied.

Mr. Perry: At this time, the defendants give verbal notice of appeal. We will serve the written notice within the time required by statute and we ask that the Court set an appeal bond.

The Court: The appeal bond for each one that was tried today will be \$100.00.

The Court will now go into the case of Frederick E. Hart.

Mr. Jenkins: May it please the Court before that trial, I should like to say to all of the defendants here, with the Court's permission, will you please remain in here until we dismiss you because you will have to sign appeal bonds. I wonder if there could be some notation made by the Reporter that the trial of Frederick Hart will be a separate trial from a procedural standpoint.

The Court: The Frederick Hart case will not be included with the other cases.

Trial of above case closed.

Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 232]

IN THE RICHLAND COUNTY COURT

ORDER- July 10, 1961

This is an appeal from conviction in magistrate's court of the common law crime of breach of the peace. There are almost 200 appellants, who were convicted by the magistrate, City of Columbia, Richland County, in four trials, trial by jury having been waived by the appellants in each case. By stipulation between counsel for the appellants and the counsel for the State, the appeals will be treated here as one since the facts and applicable law were substantially the same in each case. The trial Magistrate imposed fines upon each of the appellants ranging from \$10.00 to \$100.00. Due and timely notice of appeal from conviction was served and oral arguments were heard before me in open court. At my suggestion and with the agreement of counsel for both sides, written briefs were filed.

The appellants except to the finding of the Magistrate's Court and the fines imposed as a result of such finding of guilt upon the grounds that the State by the evidence failed to establish the *corpus delicti*, that the State failed to prove a *prima facie* case, that the evidence showed that the police powers of the State of South Carolina were used against the appellants to deprive them of the right of freedom of speech guaranteed by the Constitution of the United States and the Constitution of South Carolina, and that the evidence presented before the Magistrate showed only that the appellants at the time of their arrests were engaged in a peaceful and lawful assemblage of persons, orderly in every respect upon the public streets of the State of South Carolina.

Testimony before the Magistrate sets out the following series of events which culminated in the arrest of the

appellants and the issuance of warrants charging them [fol. 233] with breach of the peace. Shortly before noon on the third day of March, 1961, the appellants, acting in concert and with what appeared to be a preconceived and definite plan, proceeded on foot along public sidewalks from Zion Baptist Church in the City of Columbia to the State House grounds, a distance of approximately six city blocks. They walked in groups of twelve to fifteen each, the groups being separated by a few feet. Testimony shows that the purpose of this assemblage and movement of students was to walk in and about the grounds of the State House protesting, partly by the use of numerous placards, against the segregation laws of this State. The General Assembly was in session at the time.

Upon their approach to an area in front of and immediately adjacent to the State House building, known as the "horseshoe", the Negro students were met by police authorities of the State and the City of Columbia. After brief conversation between the leader of the students and police officers, the students proceeded to walk in and about the State House grounds displaying placards, some of which, at least, might be termed inflammatory in nature. There is some evidence also that a few groups of students were singing during this period. Such activity continued for approximately 45 minutes during which the students met with no interference from anyone. Testimony from city and state authorities was to the effect that during this period of time, while the students were marching in and about the grounds without hindrance from officers, large numbers of onlookers, evidently attracted by the activity of the students, had gathered in the "horse shoe" area, entirely blocking the vehicular traffic lane and interfering materially with the movement of pedestrian traffic on the sidewalks in the area and on city sidewalks immediately [fol. 234] adjacent. Testimony of city and state authorities was that vehicular traffic on the busy downtown streets of Gervais and Main, one running alongside the grounds and the other "dead ending" at the State House, was noticeably and adversely affected by the large assemblage of students and onlookers which had filled the "horseshoe" area and overflowed into Gervais and Main Streets. Some testimony disclosed that in and about the "horseshoe" area it was

necessary for the police to issue increasingly frequent orders to keep pedestrian traffic moving, even at a slow rate.

The Chief of Police of the City of Columbia and the City Manager of the City of Columbia testified that they recognized in the crowd of onlookers persons whom they knew to be potential troublemakers. It was at this time that the police authorities decided that the situation had become potentially dangerous and that the activities of the students should be stopped. The recognized and admitted leader of the students was approached by city authorities and informed that the activities of the students had created a situation which in the opinion of the officers was potentially dangerous and that such activities should cease in the interest of the public peace and safety. The students were told through their leader that they must disperse in 15 minutes. The leader of the students, accompanied by the City Manager of Columbia, went from one group of students to the other, informing them of the decision and orders of the police authorities.

The City Manager testified that the leader of the students refused to instruct or advise them to desist and disperse but that instead he "harangued" the students, whipping them into what was described by the City Manager as a semi-religious fervor. He testified that the [fol. 235] students, in response to the so-called harangue by their leader, began to sing, clap their hands and stamp their feet, refusing to stop the activity in which they were engaged and refusing to disperse. After 15 minutes of this activity the students were arrested by state and city officers and were charged with the crime of breach of the peace.

With regard to the position taken by the appellants that their activities in the circumstances set forth did not constitute a crime, the attention of the Court has been directed to several of our South Carolina cases upon this point, one of them being the case of *State v. Langston*, 195 S. C. 190, 11 S. E. (2d) 4. The defendant in that case was a member of a religious sect known as Jehovah's Witnesses. He, with others, went on a Sunday to the homes of other persons in the community and played records on the porches

announcing his religious beliefs to anyone who would listen. He also employed a loud speaker mounted on a motor vehicle to go about the streets for the same purpose. Crowds of persons were attracted by this activity. No violence of any kind occurred. Upon his refusal to obey orders of police officers to cease such activity, the defendant was arrested and convicted for breach of the peace. The Court in upholding the conviction said:

"It certainly cannot be said that there is not in this State an absolute freedom of religion. A man may believe what kind of religion he pleases or no religion, and as long as he practices his belief without a breach of the peace, he will not be disturbed.

"In general terms, a breach of the peace is a violation of public order, the disturbance of public tranquility, by any act or conduct inciting to violence.

[Vol. 236] "It is not necessary that the peace be actually broken to lay the foundation of prosecution for this offense. If what is done is unjustifiable, tending with sufficient directness to break the peace, no more is required."

With further reference to the argument advanced by the appellants that they had a constitutional right to engage in the activities for which they were eventually charged with the crime of breach of the peace, regardless of the situation which was apparently created as a result of such activities, this Court takes notice of the New York State case of *People v. Feiner*, 300 N. Y. 391, 91 N. E. (2d) 319. In that case the Court of Appeals of the State of New York wrote an exhaustive opinion in a case which arose in that State in 1950, the factual situation being similar in many respects to the cases presently before this Court upon appeal.

Feiner, a University student, stationed himself upon one of the city streets of the City of Syracuse and proceeded to address his remarks to all those who would listen. The general tenor of his talk was designed to arouse Negro people to fight for equal rights, which he told them they did not have. Crowds attracted by Feiner began to fill up

the sidewalks and overflow into the street. There was no disorder, but in the opinion of police authorities there was real danger of a disturbance of public order or breach of the peace. Feiner was requested by police to desist. He refused. The arrest was then made and Feiner was charged and convicted of disorderly conduct.

In upholding the conviction, the New York Court quoting from *Cantwell v. State of Connecticut*, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A. L. R. 1352, said:

[fol. 237] "The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts, but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets or other immediate threat to public safety, peace or order appears, the power of the State to prevent or punish is obvious."

The appellants in the present case have emphasized repeatedly in the trials and in their arguments before the Court and in their Brief that no one of them individually committed any single act which was a violation of law. It is their contention that they had a right to assemble and act as they did so long as they did no other act which was in itself unlawful. Apparently they reject the proposition that an act which is lawful in some circumstances might be unlawful in others. The New York Court in answering a similar contention made by the defendant in the *Feiner* case said:

"We are well aware of the caution with which the courts should proceed in these matters. The intolerance of a hostile audience may not in the name of order be permitted to silence unpopular opinions. The Constitution does not discriminate between those whose ideas are popular and those whose beliefs arouse oppo-

sition or dislike or hatred, guaranteeing the right of freedom of speech to the former and withholding it from the latter. We also feel, however, that the State [fol. 238] must protect and preserve its existence and unfortunate as it may be, the hostility and intolerance of street audiences and the substantive evils which may follow therefrom are practical facts of which the Courts and the law enforcement officers of the State must take notice. Where, as here, we have a combination of an aroused audience divided into hostile camps, an interference with traffic and a speaker who is deliberately agitating and goading the crowd and the police officers to action, we think a proper case has been made out under our State and Federal Constitutions for punishment."

In the present case the appellants were not prevented from engaging in their demonstration for a period of approximately an hour, nor were they hindered in any way. After such activity had gone on for approximately 45 minutes, police officers saw that streets and sidewalks had been blocked by a combination of students and a crowd of 200 or 300 onlookers which had been attracted by their activities. They recognized potential troublemakers in the crowd of onlookers which was increasing by the minute. State and city authorities testified that in their opinions the situation which had been created by the students had reached a point where it was potentially dangerous to the peace of the community. Instead of taking precipitous action even at this point, police authorities ordered the students to cease their activities and disperse, giving them the reasons for such order. The students were told that they must cease their activities in 15 minutes. The students refused to desist or to disperse. There is no indication whatever in this case that the acts of the police officers were taken as a subterfuge or excuse for the suppression of the appellants' views and opinions. The evidence is [fol. 239] clear that the officers were motivated solely by a proper concern for the preservation of order and the protection of the general welfare in the face of an actual

interference with traffic and an imminently threatened disturbance of the peace of the community.

Petitioning through the orderly procedures of the Courts for the protection of any rights, either invaded or denied, has been followed by the American people for many years. It is the proper and the correct course to pursue if one is sincerely seeking relief from oppression or denial of rights. While it is a constitutional right to assemble in a hall to espouse any cause, no person has a right to organize demonstrations which any ordinary and reasonable thinking citizen knows or reasonably should know would stir up passions and create incidents of disorder.

The State of South Carolina, the City of Columbia, and the County of Richland in the exercise of their general police powers of necessity have the authority to act in situations such as are detailed in the evidence in these cases and if the conduct of their duly appointed officers of the law is not arbitrary, capricious and the result of prejudice but is founded upon clear, convincing and common sense reasoning, there is no denial of any right.

All exceptions of the appellants are overruled and the convictions and sentences are affirmed.

Legare Bates, Senior Judge, Richland County Court,
Columbia, South Carolina,
July 10th, 1961.

[fol. 240] IN THE RICHLAND COUNTY COURT

EXCEPTIONS

1. The Court erred in refusing to hold that the State failed to establish the *corpus delicti*.

2. The Court erred in refusing to hold that the State failed to prove a *prima facie* case.

3. The Court erred in refusing to hold that the evidence shows conclusively that by the arrest and prosecution of these appellants, the police powers of the State of South Carolina are being used to deprive appellants of the right of freedom of speech, and the right peaceably to assemble

and to petition the Government for a redress of grievances; guaranteed them by Article I, Section 4 of the Constitution of South Carolina.

4. The Court erred in refusing to hold that the evidence shows conclusively that by the arrest and prosecution of appellants, the police powers of the State of South Carolina are being used to deprive appellants of the rights of freedom of assembly and freedom of speech, guaranteed them by the First Amendment to the United States Constitution, and further secured to them under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

[fol. 241]

STIPULATION

It is hereby stipulated and agreed by and between counsel for the appellants and respondent that the foregoing, when printed, shall constitute the Transcript of Record herein and that printed copies thereof may be filed with the Clerk of the Supreme Court and shall constitute the Return herein.

Respectfully submitted,

Daniel R. McLeod, Attorney General, J. C. Coleman, Jr., Assistant Attorney General, Everett N. Brandon, Assistant Attorney General, Columbia, South Carolina, Attorneys for Respondent.

Jenkins & Perry, By Lincoln C. Jenkins, Jr., Columbia, South Carolina, Attorneys for Appellants.

[fol. 242] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 243]

IN THE SUPREME COURT OF SOUTH CAROLINA

THE STATE, Respondent,

v.

JAMES EDWARDS, JR., *et al.*, Appellants.

CERTIFICATION OF RECORD

I, Frances H. Smith, Clerk of the Supreme Court of the State of South Carolina, hereby certify that the documents hereto attached constitute the true and correct record on which the appellants are petitioning for a writ of certiorari from the Supreme Court of the United States:

1. Transcript of Record.
2. Opinion of the South Carolina Supreme Court, dated December 5, 1961, which opinion is the final judgment of this Court.
3. Petition for Rehearing with order of the Court denying same endorsed thereon.
4. Petition for Stay of Remittitur.
5. Order of Associate Justice Lewis staying remittitur.

In Witness Whereof I have hereunto set my hand and seal this 19th day of March, 1962.

Frances H. Smith, Clerk, Supreme Court of South Carolina.

[fol. 244]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

Case No. 4780

THE STATE, Respondent,

v.

JAMES EDWARDS, JR., *et al.*, Appellants.Appeal From Richland County
Legare Bates, County Judge

AFFIRMED

Jenkins and Perry, of Columbia, for appellants.

Attorney General Daniel R. McLeod, and Assistant Attorneys General J. C. Coleman and Everett N. Brandon, all of Columbia, for respondent.

OPINION No. 17853—Filed December 5, 1961

Lewis, A. J.: The appellants, one hundred eighty seven in number, were convicted in the Magistrate's Court of the common law crime of breach of the peace. The charges arose out of certain activities in which the appellants were engaged in and about the State House grounds in the City of Columbia on March 2, 1961. The only question involved in their appeal to this Court is whether or not the evidence presented to the trial Court was sufficient to sustain their conviction. Conviction was sustained by the Richland County Court, from which this appeal comes. While the appellants have argued that their arrest and conviction deprived them of their constitutional rights of freedom of speech and assembly, guaranteed to them by both the State and Federal Constitutions, it is conceded in argument before us that whether or not any constitutional right was denied to them is dependent upon their guilt or innocence of the crime charged under the facts presented to the trial Court. If their acts constituted a breach of the peace, the

power of the State to punish is obvious. *Feiner v. New York*, 71 S. Ct. 303, 340 U. S. 315, 95 L. Ed. 295.

It is well settled that the trial Court must be affirmed if there is any competent evidence to sustain the charges and, in determining such question, the evidence and the reasonable inferences to be drawn therefrom must be viewed in the light most favorable to the State.

The testimony discloses the following events which resulted in the arrest of the appellants and the issuance of warrants charging them with breach of the peace.

Shortly before noon on March 2, 1961, a group of approximately 200 Negro students, after attending a meeting at the Zion Baptist Church in the City of Columbia, walked in groups of approximately fifteen each from the church along public sidewalks to the State House grounds, a distance of approximately six blocks. The purpose of the movement of the group to the State House was to parade about the grounds in protest to the General Assembly and the general public against the laws and customs of the State relative to segregation of the races, such demonstration to continue until, as the testimony shows, their conscience told them that the demonstration had lasted long enough. The General Assembly was in session at the time.

As they reached the State House grounds, the group was met by police authorities of the State and the City of Columbia. After a brief conference between their leader and police officers, the group proceeded to parade about the State House grounds. They continued to parade around the State House for approximately forty-five minutes during which time they met with no interference. During this forty-five minute period a crowd, evidently attracted by the activities of the paraders, began gathering in the area in front of the State House, known as the "horseshoe", blocking the lanes for vehicular traffic through such area and materially interfering with the movement of pedestrian [fol. 245] traffic on the sidewalks in the area and on sidewalks immediately adjacent. Vehicular traffic on the adjacent city streets was noticeably and adversely affected by the large assemblage of paraders and the crowd which had overflowed the horseshoe area into the adjacent streets.

The traffic situation can best be understood in relation to the area involved. Columbia is the State Capitol. Main and Gervais Streets in Columbia intersect in front of the State House. Gervais Street runs in an east-west direction, along the northern side of the State House grounds. Main Street, running north and south, intersects Gervais Street in front of the State House, where it dead-ends. The area referred to as the "horseshoe" is in effect a continuation of Main Street into the State House grounds. It is about $1\frac{1}{2}$ block in length and about the width of Main Street. Situated at the center of the entrance to the "horseshoe" is a monument, with space on each side for vehicular traffic to enter and leave the area. It is reserved for parking of vehicles and, on the occasion in question, was filled with automobiles. It is a violation of law to block or impede traffic in the area, Section 1417, Cumulative Supplement, 1952 Code of Laws. Sidewalks are located around the area for use by pedestrians.

The intersection of Main and Gervais Streets in front of the State House in Columbia is, by common knowledge, one of the busiest intersections in the State of South Carolina, both from the standpoint of vehicular and pedestrian traffic.

On the occasion in question, in addition to the approximately 200 paraders in the area, there had gathered approximately 350 onlookers and the crowd was increasing. With the paraders and the increasingly large number of onlookers congregated in the above area seriously affecting the flow of pedestrian and vehicular traffic, the officers approached the admitted leader of the paraders and informed him that the situation had reached the point where the activities of the group should cease. They were told through their leader that they must disperse within fifteen minutes. The parade leader, accompanied by the police authorities, went among the paraders and informed them of the decision and orders of the police. The leader of the group refused to instruct or advise them to disperse but instead began a fervent speech to the group and in response they began to sing, shout, clap their hands and stamp their feet, refusing to disperse. After about fifteen minutes of this noisy demonstration, the appellants, who

were engaging in the demonstration, were arrested by State and City officers and charged with the crime of breach of the peace. Upon the trial, all of the appellants were identified as participants in the parade and activities out of which the charge arose.

The warrants issued against appellants charge that they "on March 2, 1961, on the State Capitol grounds, on adjacent sidewalks and streets, did commit a breach of the peace in that they, together with a large group of people, did assemble and impede the normal traffic, singing and parading with placards, failed to disperse upon lawful orders of police officers, all of which tended directly to immediate violence and breach of the peace in view of existing conditions."

"Breach of the peace is a common law offense which is not susceptible to exact definition. It is a generic term, embracing 'a great variety of conduct destroying or menacing public order and tranquility'. *Cantwell v. State of Connecticut*, 359 U. S. 296, 60 S. Ct. 900, 905, 84 L. Ed. 1213, 128 A. L. R. 1352." *State v. Randolph*, 239 S. C. 79, 121 S. E. (2d) 349.

The general definition of the offense of breach of the peace approved in our decisions is that found in 8 Am. Jur. 834, Section 3 as follows: "In general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquillity, by any act or conduct inciting to violence . . . it includes any violation of any law enacted to preserve peace and good order. It may consist of an act of violence or an act likely to produce violence. It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required. Nor is actual personal violence an essential element in the offense. . . .

[fol. 246] "By 'peace,' as used in the law in this connection, is meant the tranquillity enjoyed by citizens of a municipality or community where good order reigns among its members, which is the natural right of all persons in political society."

See: *Soullos v. Mills Novelty Co.*, 198 S. C. 355, 17 S. E. (2d) 869; *State v. Langston*, 195 S. C. 190, 11 S. E. (2d) 1; *Childers v. Judson Mills Store*, 189 S. C. 224, 200 S. E. 770; *Webber v. Farmers Chevrolet Co.*, 186 S. C. 111, 195 S. E. 139; *Lyda v. Cooper*, 169 S. C. 451, 169 S. E. 236.

In determining whether the acts of the appellants constituted a breach of the peace we must keep in mind that the right of the appellants to hold a parade to give expression to their views is not in question. They were not arrested for merely holding a parade, nor were they arrested for the views which they held and were giving expression. Rather, appellants were arrested because the police authorities concluded that a breach of the peace had been committed.

The parade was conducted upon the State House grounds for approximately forty five minutes. It was not until the appellants and the crowd, attracted by their activities, were impeding vehicular and pedestrian traffic upon the adjacent streets and sidewalks that the officers intervened in the interest of public order to stop the activities of the appellants at the time and place. Notice was given to appellants by the officers that the situation had reached the point where they must cease their demonstration. They were given fifteen minutes in which to disperse. The orders of the police officers under all of the facts and circumstances were reasonable and motivated solely by a proper concern for the preservation of order and prevention of further interference with traffic upon the public streets and sidewalks. The appellants not only refused to heed and obey the reasonable orders of the police, but engaged in a fifteen minute noisy demonstration in defiance of such orders.

The acts of the appellants under all the facts and circumstances clearly constituted a breach of the peace.

Affirmed.

Taylor, C.J., Oxner, Egge and Moss, J.J., concur.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 247]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA
Case No. 4780

THE STATE, Respondent,

against

JAMES EDWARDS, JR., *et al.*, Appellants.

PETITION FOR REHEARING Filed December 14, 1961

To the Honorable Chief Justice and Associate Justices
of the Supreme Court of South Carolina:

Petitioners, being one hundred eighty seven in number and appellants in the above entitled case, respectfully submit that this Court, in affirming the judgment of the Court below, may have overlooked or misapprehended the following points:

1. That the record before the Court is completely lacking in evidence that any actions of petitioners breached the peace, either by active conduct or by unlawful or unjustifiable conduct tending with sufficient directness to break the peace and that their convictions therefore are in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States, *Thompson v. City of Louisville*, 362 U.S. 199, 80 S. Ct. 629 (1960).

2. That under the facts and circumstances as presented by the record before the Court, the actions of petitioners [fol. 248] were not of a nature that would give rise to the use of the police power of the State of South Carolina to arrest on breach of the peace charges, and their convictions under such conditions deny to petitioners Federal and State constitutional guarantees of freedom of assembly, freedom of speech and freedom to petition the Government for a redress of grievances.

CONCLUSION

Wherefore, petitioners respectfully urge that they be granted a rehearing in this case.

Respectfully submitted,

Jenkins and Perry, Columbia, South Carolina, By
Lincoln C. Jenkins, Jr., Donald James Sampson,
Greenville, South Carolina, Attorneys for Petitioners.

Columbia, South Carolina
December 13, 1961

[fol. 249]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA
Case No. 4780

THE STATE, Respondent,
against

JAMES EDWARDS, JR., *et al.*, Appellants.

CERTIFICATE

I, Harold R. Boulware, hereby certify that I am a practicing attorney of this Court and am in no way connected with the within case. I further certify that I am familiar with the record of this case and have read the opinion of this Court which was filed December 5, 1961, and in my opinion there is merit in the Petition for Rehearing.

Harold R. Boulware

Columbia, South Carolina
December 13, 1961

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 250] [File endorsement omitted]

PETITION DENIED—December 27, 1961

C. A. Taylor, C. J., G. Dewey Oxner, A. J., Lionel K. Legge, A. J., Joseph R. Moss, A. J., Woodrow Lewis, A. J.

(Clerk's Certificate to foregoing paper (omitted in printing)).

[fol. 252]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA
Case No. 4780

THE STATE, Respondent,

against

JAMES EDWARDS, JR., *et al.*, Appellants.

PETITION FOR STAY OF REMITTITUR—December 27, 1961

**To the Honorable J. Woodrow Lewis, Associate Justice,
Supreme Court of South Carolina:**

The petition of James Edwards, Jr., *et al.*, being all one hundred eighty-seven (187) persons, who were the appellants in the above-entitled cause, respectfully shows:

1.

Petitioners have been convicted of the common law offense of breach of peace. Their sentences and convictions have been affirmed by the Supreme Court of South Carolina in an opinion which was filed on December 5, 1961.

2.

Thereafter, petitioners requested rehearing of said cause in a petition therefor dated December 13, 1961. Rehearing was denied on December 27, 1961.

[fol. 253]

3.

Petitioners are aggrieved with said decision and intend to petition the Supreme Court of the United States for a Writ of Certiorari in order that that Court can pass upon petitioners' contention that their arrests and convictions are devoid of evidentiary support and violate petitioners' right to freedom of association and freedom of speech in violation of the Fourteenth Amendment to the United States Constitution.

4.

Under the Rules of the United States Supreme Court, petitioners have ninety (90) days after the rendering of the final judgment of this Court within which to file their petition for Writ of Certiorari. Petitioners are therefore desirous in obtaining a stay of the sentences imposed upon them and a Stay of Remittitur herein for a period of ninety (90) days after the rendering of the final judgment of this Court in order that they may have time within which to file said Petition for Writ of Certiorari.

5.

Counsel for the State have agreed to a proposed Order, Staying the Sentences and the Remittitur herein for the requested period.

Wherefore, petitioners pray that execution of their sentences be stayed and that the Remittitur in this matter be stayed by order of this Honorable Court for a period [fol. 254] of ninety (90) days after the final judgment of said Court in order that they may file in the United States Supreme Court a Petition for Writ of Certiorari.

Jenkins and Perry, Columbia, South Carolina, By
Matthew J. Perry, Donald James Sampson, Green-
ville, South Carolina, Attorneys for Petitioners.

December 27, 1961.

[fol 255]

IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

Case No. 4780

THE STATE, Respondent,

against

JAMES EDWARDS, JR., *et al.*, Appellants.

ORDER STAYING REMITTITUR

On the 5th day of December, 1961, we issued an Opinion in the above case, affirming the judgment of the Richland County Court which sustained the judgment of the Magistrate wherein appellants were convicted of the common law offense of breach of peace.

Thereafter, appellants petitioned this Court for a rehearing and, on December 27, 1961, we entered an Order, denying same.

Appellants have now indicated that they desire and intend to file in the Supreme Court of the United States a Petition for Writ of Certiorari, seeking review of our judgment in said cause. Under the rules and decisions of the United States Supreme Court, they have ninety (90) days after the final judgment of this Court within which to file their Petition for Writ of Certiorari. The final judgment of [fol. 256] this Court is the Order, denying rehearing. *Department of Banking, State of Nebraska v. Pink*, 65 S. Ct. 253, 217 U. S. 264, 87 L. Ed. 254. They desire a stay of the Remittitur and Sentences in this matter pending the filing of their Petition for Writ of Certiorari in the United States Supreme Court and thereafter until said matter has been disposed of by that Court. It appears that the request for stay of remittitur and sentences is proper. Now, on motion of counsel for the appellants, by and with the consent of counsel for the respondent,

It Is Ordered that the Remittitur and execution of the sentences herein be stayed for a period of ninety (90) days after the day of the final judgment of this Court in order that petitioners may file with the United States Supreme Court their Petition for Writ of Certiorari.

It Is Further Ordered that if a notice from the Clerk of the United States Supreme Court that the Petition for Writ of Certiorari has been filed in that Court is filed with the Clerk of the Supreme Court of South Carolina within the time aforesaid, the stay of remittitur and execution of sentences herein shall continue in effect until final disposition of the case by the Supreme Court of the United States.

J. Woodrow Lewis, Associate Justice.

We Consent:

Daniel R. McLeod, Attorney General; J. C. Coleman, Jr.,
Assistant Attorney General.

[fol. 257]

SUPREME COURT OF THE UNITED STATES

No. 819—October Term, 1961

JAMES EDWARDS, JR., *et al.*, Petitioners,

VS.

SOUTH CAROLINA

ORDER ALLOWING CERTIORARI—May 14, 1962

The petition herein for a writ of certiorari to the Supreme Court of the State of South Carolina is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of this application.

SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED

MAR 27 1962

CLERK

IN THE

Supreme Court of the United States

October Term, 1961

No. ~~819~~ 86

JAMES EDWARDS, JR., and 186 Others,

Petitioners,

—v.—

STATE OF SOUTH CAROLINA.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF SOUTH CAROLINA**

JACK GREENBERG
CONSTANCE BAKER MOTLEY
JAMES M. NABBIT, III
MICHAEL MELTSNER
10 Columbus Circle
New York 19, New York

MATTHEW J. PERRY
LINCOLN C. JENKINS, JR.
1107½ Washington Street
Columbia 1, South Carolina

DONALD JAMES SAMPSON
Greenville, South Carolina

Attorneys for Petitioners

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IN THE
Supreme Court of the United States

October Term, 1961

No.

JAMES EDWARDS, JR., and 186 Others,

Petitioners,

—v.—

STATE OF SOUTH CAROLINA.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF SOUTH CAROLINA**

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of South Carolina entered in the above entitled case on December 5, 1961, rehearing of which was denied on December 27, 1961.

Citation To Opinions Below

The opinion of the Supreme Court of South Carolina, which opinion is the final judgment of that Court, is as yet unreported and is set forth in the appendix hereto, *infra* pp. 10a-15a. The opinion of the Richland County Court is unreported and is set forth in the appendix hereto, *infra* pp. 1a-9a.

Jurisdiction

The judgment of the Supreme Court of South Carolina was entered December 5, 1961, *infra* pp. 10a-15a. Petition

for Rehearing was denied by the Supreme Court of South Carolina on December 27, 1961, *infra* p. 16a.

The Jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1257(3), petitioners having asserted below and asserting here, deprivation of rights, privileges and immunities secured by the Constitution of the United States.

Questions Presented

Whether petitioners were denied due process of law as secured by the Fourteenth Amendment to the Constitution of the United States:

1. When convicted of charges that their conduct, which was an assembly to express opposition to racial segregation on the State House grounds, "tended directly to immediate violence and breach of the peace" on a record containing no evidence of threatened, imminent, or actual violence.

2. When convicted of the common law crime of breach of the peace because exercise of their rights of free speech and assembly to petition for a redress of grievances allegedly "tended" to result in unlawful conduct on the part of other persons opposing petitioners' views.

Constitutional Provisions Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Statement

Warrants issued against petitioners charged them with common law breach of the peace on March 2, 1961 at the

South Carolina State Capitol grounds. The warrants alleged *inter alia* that they:

" . . . did commit a breach of the peace in that they, together with a large group of people, did assemble and impede the normal traffic, singing and parading with placards, failed to disperse upon lawful orders of police officers, *all of which tended directly to immediate violence and breach of the peace in view of existing conditions*" (R. 3). (Emphasis supplied.)

The City Manager of Columbia who was supervising the police department at the time (R. 18-19) testified that "My official reason for dispersing the crowd was to avoid possible conflict, riot and dangers to the general public. . . ." (R. 16-17).

The Chief of Police testified that he took action "[t]o keep down any type of violence or injury to anyone" (R. 46; and see R. 53, 100, 101, 106, to the same effect).

The trial court sitting without a jury found petitioners ✓ guilty of common law breach of the peace. The Court imposed fines of \$100 or 30 days in jail in most cases; in many of these cases one-half of the fine was suspended. In a few cases the defendants were given \$10 fines or five days in jail (R. 78; 155; 217-218; 229-230).

The Richland County Court affirmed, principally upon authority of *People v. Feiner*, 300 N. Y. 391, 91 N. E. 2d 319, concluding there was a "dangerous" (R. 238) situation and actions which a "reasonable thinking citizen knows or should know would stir up passions and create incidents of disorder" (R. 239).

The Supreme Court of South Carolina affirmed on the ground that:

"The orders of the police officers under all of the facts and circumstances were reasonable and motivated

solely by a proper concern for the preservation of order and prevention of further interference with traffic upon the public streets and sidewalks."

In fact, the record furnishes no evidence of violence or even a threat of violence either by or against petitioners. Nor, indeed, does the record demonstrate that the petitioners, who were carrying their placards and walking about wholly within the State House grounds, had themselves stopped the sidewalks or traffic; only that bystanders were attracted who moved on at police request, and that traffic was somewhat slowed, a condition which did not presage violence. Either after arrest, or after the police order to disperse, petitioners sang hymns and patriotic songs in a singing, chanting, shouting response, as one might find in a religious atmosphere. All of these facts are developed at greater length, with appropriate record citations, below.

The genesis of this criminal prosecution lies in a decision of various high school and college students in Columbia, South Carolina to protest to the State Legislature and government officials against racial segregation:

"To protest to the citizens of South Carolina, along with the Legislative Bodies of South Carolina, our feelings and our dissatisfaction with the present condition of discriminatory actions against Negroes, in general, and to let them know that we were dissatisfied and that we would like for the laws which prohibited Negro privileges in this State to be removed" (R. 138).

The State House is occupied by the State Legislature which was in session at the time (R. 37).

The Police Chief recognized that the demonstration was part of "a widespread student movement which is designed to possibly bring about a change in the structure of racial segregation laws and custom" (R. 49).

The petitioner who testified to this, James Jerome Kitron, a third year student at Benedict College (R. 142), stated that the petitioners had met at Zion Baptist Church on March 2, 1961, divided into groups of 15 to 18 persons (R. 135), and proceeded to the State House grounds which occupy two square blocks (R. 168). They are in a horseshoe shaped area, bounded by a driveway and parking lot which is "used primarily for the parking of State officials' cars" (R. 159). There is some passage in and out of this area by vehicular traffic and by people leaving and entering the State building. In addition, there are main sidewalk areas leading into the State Capitol on either side of the horseshoe area (R. 159). The horseshoe area "is not really a thoroughfare" (R. 123). It is an entrance and exit for those having business in the State House (R. 123). During the time of the demonstration no traffic was blocked going in and out of the horseshoe area; no vehicle made any effort to enter (R. 119).

The students proceeded from the church to the parking area in these small groups which were, as petitioner Kitron put it, approximately a half block apart, or as Chief Campbell put it, about a third of a block apart (R. 107), although at various times they moved closer together (R. 107, 169). But, "there never was at any time any one grouping of all of these persons together" (R. 111).

The police informed petitioners "that they had a right, as a citizen, to go through the State House grounds as any other citizen has, as long as they were peaceful" (R. 43, 47, 104, 162). Their permission, however, was limited to being "allowed to go through the State House grounds one time for purposes of observation" (R. 162). This took about half an hour (R. 163). As they went through the State House grounds they carried signs, such as "I am proud to be a Negro," and "Down with Segregation" (R. 141). The general feeling of the group was that segrega-

tion in South Carolina was against general principles of humanity and that it should be abolished (R. 138).

There is dispute in the record whether it was before or after arrest (Compare R. 38 with R. 139) that petitioners commenced singing religious songs, the "Star Spangled Banner" and otherwise vocally expressing themselves, but there is agreement that none of this occurred until at least after the police ordered petitioners to disperse (see R. 38, 92). As the City Manager described it, this was "a singing, chanting, shouting response, such as one would get in a religious atmosphere . . ." (R. 92). Thereafter the students were lined up and marched to the City Jail and the County Jail (R. 18).

The students were at all times well demeaned, well dressed, orderly (R. 29). The City Manager disagreed with this designation only to the extent that petitioners engaged in the religious and patriotic singing described above (R. 29).

Nowhere in the record, however, can any evidence be found that violence occurred, or that violence was threatened. The City Manager testified that among the onlookers he "recognized possible trouble makers" (R. 33), but "took no official action against [the potential trouble makers] because there was none to be taken. They were not creating a disturbance, those particular people were not at the time doing anything to make trouble, but they could have been." He did not even "talk to the trouble makers" (R. 34). When onlookers were "told to move on from the sidewalks" they complied (R. 38). None refused (R. 38).

The City Manager stated that thirty to thirty-five officers were present (R. 22). The Police Chief of Columbia had fifteen men in addition to whom were State Highway Patrolmen, South Carolina Law Enforcement officers, and three Deputy Sheriffs (R. 50). This was, in the City Manager's

words "ample policemen" (R. 168). But he believed that "Simply because we had ample policemen there for their protection and the protection of others, is no reason for not placing them under arrest when they refused a lawful request to move on" (R. 168).

The police had no particular "trouble makers in mind," merely that "you don't know what might occur and what is in the mind of the people" (R. 50). Asked "You were afraid trouble might occur; from what source?" the Chief replied "You can't always tell" (R. 54). Asked "Are you able, sir, to say where the trouble was?" he replied, "I don't know" (R. 54). None of the potential "trouble makers" was arrested and pedestrians ordered to "move on at [the Chief's] command" did so (R. 114).

So far as obstruction of the street or sidewalks is concerned, there is a similar absence of evidence. The City Manager testified that the onlookers blocked "the sidewalks, not the streets" (R. 32). But they cleared the sidewalks when so ordered (R. 34). While petitioners "probably did" (R. 109, 111) slow traffic in crossing the streets on the way to the grounds (R. 109), once there, they were wholly within the grounds (R. 188). They did not, as stated above, block traffic within the grounds (R. 53); no vehicle having made an effort to enter the parking area during this period of time. Their singing, however, was said by the City Manager to have slowed traffic (R. 92). And the noise, he said, was disrespectful to him (R. 99).

Columbia has an ordinance forbidding the blocking of sidewalks and petitioners were not charged under this ordinance (R. 54). Pedestrians within the grounds could move to their destinations (R. 48, 52, 195). Onlookers moved along when ordered to by the police (R. 34). There is no evidence at all, as stated in the charge that traffic congestion tended to any violence at all.

How the Federal Questions Were Raised and Decided Below

The petitioners were tried before the Columbia City Magistrate of Richland County in four separate trials on the 7th, 13th, 16th and 27th of March, 1961. At the close of the prosecution's case on the 7th of March, petitioners moved to dismiss the case against them:

" . . . on the ground that the evidence shows that by arresting and prosecuting the defendants, the officers of the State of South Carolina and of the City of Columbia were using the police power of the State of South Carolina for the purpose of depriving these defendants of rights secured them under the First and Fourteenth Amendments of the United States Constitution. I particularly make reference to freedom of assembly and freedom of speech" (R. 76).

This motion was denied (R. 76). Following judgment of conviction petitioners moved for arrest of judgment or in the alternative a new trial relying, *inter alia*, on the denial of petitioners' rights to freedom of speech and assembly guaranteed by the Fourteenth Amendment to the Constitution of the United States (R. 79, 80). The motions were denied (R. 80).

Similar motions to dismiss and for arrest of judgment or in the alternative a new trial all claiming protection of petitioners' rights, under the Constitution of the United States, to freedom of speech and assembly in that the evidence showed petitioners "were included in a peaceful and lawful assemblage of persons, orderly in every respect upon the public streets of the State of South Carolina" (R. 134, 201) were made at the trials on the 13th (R. 134, 152, 155), the 16th (R. 201, 214, 218) and the 27th (R. 228,

229, 230). These motions were all denied by the trial Court (R. 135, 152, 155, 201, 214, 218, 228 ~~229~~ 230).

Petitioners appealed to the Richland County Court where, by stipulation, the appeals were treated as one "since the facts and applicable law were substantially the same in each case" (R. 232).

The Richland County Court, upon the authority of *Feiner v. New York*, 300 N. Y. 391, 91 N. E. 2d 319 (R. 236, 237, 238) held:

"While it is a constitutional right to assemble in a hall to espouse any cause, no person has a right to organize demonstrations which any ordinary and reasonable thinking citizen knows or reasonably should know would stir up passions and create incidents of disorder."

Petitioners appealed to the Supreme Court of the State of South Carolina, excepting to the judgment below as follows:

"4. The Court erred in refusing to hold that the evidence shows conclusively that by the arrest and prosecution of appellants, the police powers of the State of South Carolina are being used to deprive appellants of the rights of freedom of assembly and freedom of speech, guaranteed them by the First Amendment to the United States Constitution, and further secured to them under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States" (R. 240).

The Supreme Court of South Carolina, in treating petitioners constitutional objections, stated (*infra* pp: 11a-12a):

"While the appellants have argued that their arrest and conviction deprived them of their constitutional rights

of freedom of speech and assembly . . . it is conceded in argument before us that whether or not any constitutional right was denied to them is dependent upon their guilt or innocence of the crime charged under the facts presented to the trial Court. If their acts constituted a breach of the peace, the power of the State to punish is obvious. *Feiner v. New York*, 71 S. Ct. 303, 340 U. S. 315, 95 L. ed. 295."

The Supreme Court of South Carolina then proceeded to define breach of the peace generally and found it to include "an act of violence or an act likely to produce violence", *infra* p. 14a, and held that "the orders of the police officers under all of the facts and circumstances were reasonable and motivated solely by a proper concern for the preservation of order and prevention of further interference with traffic upon the public streets and sidewalks", *infra* p. 15a.

Reasons for Granting the Writ

This case raises a question of recurring importance to a democratic society—the extent to which a state may limit public expression on issues of national importance and concern on the ground that such expression may lead to violence although none in fact has occurred or even been threatened—answered in the Courts below in a manner contrary to principles enunciated by this Court.

I

Petitioners' conviction on warrants charging that their conduct "tended directly to immediate violence and breach of the peace" is unconstitutional in that it rests on no evidence of violence or threatened violence.

It is settled that this Court cannot be concerned with whether this record proves the commission of some crime other than that with which petitioners were charged. Conviction of an accused for a charge that was never made is a violation of due process. *Cole v. Arkansas*, 333 U. S. 196; *De Jonge v. Oregon*, 299 U. S. 353, 362. It is equally true that an accused cannot be convicted "upon a charge for which there is no evidence." *Garner v. Louisiana*, 7 L. ed. 2d 207, 214; *Thompson v. Louisville*, 362 U. S. 199, 206.

Petitioners were convicted of common law breach of the peace, for expressing their disapproval of the racial policies of the State of South Carolina, upon warrants (R. 2, 3, 156, 157, 225, 226) charging that:

"On March 2, 1961, on State Capitol grounds, on adjacent sidewalks and streets, did commit a breach of the peace in that they, together with a large group of people, did assemble and impede normal traffic singing and parading with placards, failed to disperse upon lawful orders of police officers, all of which tended directly to violence and breach of the peace in view of existing conditions" (R. 2, 3, 157, 226). (Emphasis added.)

To sustain conviction on such a charge the Constitution requires proof of a substantial evil that rises far above public inconvenience, annoyance and unrest and a clear and present danger that that evil will occur, *Cantwell v.*

Connecticut, 310 U. S. 296, 311. The Supreme Court of South Carolina equated this constitutional standard with the offense charged, *infra* pp. 10a, 11a. These warrants charge petitioners with conduct which "tended directly to immediate violence and breach of the peace", and, therefore, they cannot be convicted on proof of less.

This record is, however, without proof of violence or threatened violence on the part of either the petitioners or the onlookers to their demonstration. The very most that may be said of petitioners' conduct is that they sang the "Star Spangled Banner," "America" and religious hymns loudly, though not in a contemptuous manner (R. 39) and stomped their feet when told to disperse. There is no testimony of any kind that any of the demonstrators or the onlookers made any remark or action or, indeed, gesture which could be considered a prelude to violence. Those who watched the demonstration appear to have been curious and nothing more.

When asked why he thought there was a possibility of violence, the City Manager who ordered the arrests, testified he noticed some "possible troublemakers" among the bystanders (R. 33-36). But these "possible troublemakers", who were not identified, did nothing, said nothing and moved on when so requested by the police (R. 33-36, 38, 54, 175). Petitioners cannot be convicted on the totally unsubstantiated opinion of the police of possible disorder. *Garner v. Louisiana*, 7 L. ed. 2d 207; Cf. *Hague v. C. I. O.*, 307 U. S. 496, 516. Compared to the body contact and threats in *Feiner v. New York*, 340 U. S. 315, 317, 318; the riotous circumstances of *Terminiello v. Chicago*, 337 U. S. 1, 3 and the mob action in *Sellers v. Johnson*, 163 F. 2d 877 (8th Cir. 1947) cert. denied 332 U. S. 851, this record hardly indicates even a remote threat to public order.

Although the police testified that petitioners' demonstration was stopped because the situation had become "potentially dangerous" and not because of traffic problems (R. 16-17, 46, 53, 100-101, 186), and petitioners were charged with conduct which "tended directly to immediate violence and breach of the peace", the Supreme Court of South Carolina considered interference with traffic as an element of petitioners' offense, *infra* p. 15a. Even if causing interference with traffic alone could uphold these convictions, the conclusory language of the Supreme Court of South Carolina concerning "impeding traffic" does not bear analysis.

The City Manager and various police officers testified that vehicular traffic was slowed on the city street in front of the State House Building by those attracted by the demonstration; that the lanes leading to the dead-end parking area directly in front of the legislative building were occasionally obstructed; that the sidewalk near the horseshoe area (and part of the State House grounds) where the demonstration took place was crowded; and that the sidewalk on the other side of the city street from the horseshoe was crowded with onlookers. On the uncontradicted testimony of the City Manager and the police officers, however, no one attempted to use the lanes leading to the parking area (R. 119, 123); while vehicular traffic on the city street was slowed, a police officer was dispatched and kept it moving (R. 45, 48); and the curious who had congregated to watch the demonstration moved on promptly when requested by the police (R. 38). Passage of pedestrians was not blocked on any sidewalk (R. 48, 52, 195). The police were in complete control of any traffic problems (R. 34, 48, 168, 22).

These facts do not permit an inference of violence or threatened violence. Petitioners were not charged with obstructing traffic (although there is a specific South Caro-

lina statute prohibiting obstruction of traffic on the State House Grounds, §1-417, Cumulative Supplement, 1952 Code of Laws, see *infra* p. 12a (R. 54)) but, rather with conduct which "tended directly to immediate violence and breach of the peace." Without evidence of verbal threats, disobedience of police orders to move on, surging and milling or body contact, any conclusion that a group of bystanders, observing a demonstration in front of the State House would turn immediately violent, while at least 30 policemen were in attendance, is purely speculative.

Nor can a conclusion that petitioners' demonstration caused some slowing of vehicular and pedestrian traffic in and of itself be used to uphold these convictions. Petitioners were charged with the broad offense of common law breach of the peace. The Supreme Court of South Carolina adopted the general definition of breach of the peace found in 8 Am. Jur. 834, *infra* p. 14a, which definition extends to an act "of violence or an act likely to produce violence." Neither the general definition quoted by the Supreme Court of South Carolina or the remainder of the section on Breach of the Peace, 8 Am. Jur. 835, 836, 837, delineates as breach of the peace, the holding of a non-violent demonstration which causes slower traffic on streets and sidewalks. Petitioners have been unable to locate any South Carolina decision applying breach of the peace to any such situation or related situation.¹ In this regard, Mr. Justice Harlan's words in *Garner v. Louisiana*, *supra* at p. 236, are here relevant:

¹ Compare the South Carolina cases cited by the Supreme Court of South Carolina, *infra* p. 14a, all but one of which deal with repossessing goods sold on the installment plan, *State v. Langston*, 195 S. C. 190, 11 S. E. (2d) 1, the other case, upheld the conviction of a Jehovah's Witness who played phonograph records on the porches of private homes and used a soundtruck.

"But when a State seeks to subject to criminal sanctions conduct which, except for a demonstrated paramount state interest, would be within the range of freedom of expression as assured by the Fourteenth Amendment, it cannot do so by means of a general and all-inclusive breach of the peace prohibition. It must bring the activity sought to be proscribed within the ambit of a statute or clause narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State."

To convict petitioners because a byproduct of their expression was interference with traffic would be to open South Carolina's use of common law breach of the peace to the vice of vagueness." *Cantwell v. Connecticut*, 310 U. S. 296, 307, 308.

One of the purposes of rights of freedom of speech, assembly and petition for redress of grievances is to influence public opinion and persuade others to one's own point of view. *De Jonge v. Oregon*, 299 U. S. 353, 365; *Sellers v. Johnson*, 163 F. 2d 877, 881 (8th Cir. 1947) cert. denied 332 U. S. 851; *Cantwell v. Connecticut*, 310 U. S. 296, 310; *Whitney v. California*, 274 U. S. 357, 375 (Mr. Justice Brandeis concurring). Cf. *Rockwell v. Morris*, 19 N. Y. 721 (1960) cert. denied 7 L. ed. 2d 131. The exercise of these rights on controversial issues will inevitably lead to situations where numbers of persons hostile to the views expressed are in attendance. If it were otherwise, the salutary function of these rights would be lost and, ironically, successful attraction of others to hear and see your views would result in the denial of the right to express those views. To allow the police to use the very fact that there are other persons besides the demonstrators in attendance as the basis for a conclusion as to the likelihood of violence would be to subject these rights "to arbitrary suppression of free expression." *Hague v. C. I. O.*, *supra* at 516.

II

Petitioners' convictions were obtained in violation of their rights to freedom of speech, assembly and petition for redress of grievances in that they were convicted because their protected expression allegedly tended to lead to violence and breach of the peace on the part of others.

Mr. Justice Brandeis has written, *Whitney v. California*, 274 U. S. 357, 378, concurring opinion, that:

" . . . the fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the State. Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgement of the rights of free speech and assembly."

Petitioners demonstrated their desire for reform of the racially discriminatory policies of the State of South Carolina on the grounds of the State Legislative Building while the Legislature of the State of South Carolina was in session. It would be difficult to conceive of a more appropriate time and place to exercise the rights of freedom of expression. Cf. *Hague v. C. I. O.*, 307 U. S. 496, 515; *United States v. Cruikshank*, 92 U. S. 542.

Petitioners have argued that this record is barren of any evidence of conduct which was violent or threatened disorder. But even if this Court should hold that the evidence is adequate to avoid the rule of *Thompson v. Louisville*, *supra*, and *Garner v. Louisiana*, *supra*, such a determination still does not overcome the flaw in the convictions here. For these convictions were sustained below on the ground

that petitioners' conduct threatened violence and breach of the peace on the part of those who observed the demonstration. In the circumstances of this case, however, the duty of the police was to protect petitioners from the unlawful conduct of others, not to silence freedom of expression. This is especially true when the disorder is not actual and imminent but (as testified by the officers) "possible", and where, as here, large numbers of policemen are present and in control of the situation. *Hague v. C. I. O.*, 307 U. S. at 516; *Sellers v. Johnson*, 163 F. 2d 877, 881 cert. denied 332 U. S. 851. Cf. *Robeson v. Faulli*, 94 F. Supp. 62, 69, 70 (S. D. N. Y. 1950).

If this is the duty of the police when there are potential threats of violence it must *a fortiori* be the duty of the police when traffic adjustment is involved. The minor inconveniences necessitated by traffic control and asking bystanders to move on cannot be enlarged into a justification for abridging the freedoms of expression so fundamental to the health of the democratic process. Petitioners have not been convicted pursuant to a statute evincing a legislative judgment that their expression should be limited in the interests of some other societal value, but under a generalized conception of common law breach of the peace. *Cantwell v. Connecticut*, 310 U. S. at 307. Here as in the *Cantwell* case, there has been no such specific declaration of state policy which "would weigh heavily in any challenge of the law as infringing constitutional limitations" (310 U. S. at 308). Petitioners were not charged with violating §1-417, Cum. Supp. 1952 Code of Laws of South Carolina, in which the Legislature did address itself to the problem of traffic control in the State House area. In the absence

² §1-417 provides as follows:

"It shall be unlawful for any person:

1. Except State officers and employees and persons having lawful business in the buildings, to use any of the driveways,

of a state statute, narrowly drawn, South Carolina cannot punish expression which only leads to minor interference with traffic. Petitioners' "communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render [them] liable to conviction of the common law offense in question" *Cantwell v. Connecticut*, 310 U. S. 296, 311; cf. *Thornhill v. Alabama*, 310 U. S. 88, 105, 106. See Statement, *supra*, p. 7.

This Court has found the interests of the State insufficient to justify restriction of freedom of speech and assembly in circumstances far more incendiary than these. *Terminiello v. Chicago*, 337 U. S. 1; *Hague v. C. I. O.*, 307 U. S. 496; *Kunz v. New York*, 340 U. S. 290. Cf. *Sellers v. Johnson*, 163 F. 2d 877 (8th Cir. 1947) cert. denied 332 U. S. 851; *Rockwell v. Morris*, 10 N. Y. 721 (1961) cert. denied 7 L. ed. 2d 131. In this case there is no indication of imminent violence as in *Feiner v. New York*, 340 U. S. 315, 318, where a "pushing, milling and shoving crowd" was "moving forward."

The right to assemble peacefully to express views on issues of public importance must encompass security against being assaulted for having exercised it. Otherwise, the exercise of First and Fourteenth Amendment freedoms would be contingent upon the unlawful conduct of those

alleys or parking spaces upon any of the property of the State, bounded by Assembly, Gervais, Bull and Pendleton Streets in Columbia upon any regular weekday, Saturdays and holidays excepted, between the hours of 8:30 A.M., and 5:30 P.M., whenever the buildings are open for business; or

2. To park any vehicle except in spaces and manner marked and designated by the State Budget and Control Board, in cooperation with the Highway Department, or to block or impede traffic through the alleys and driveways."

opposed to the views expressed.³ Such a result would only serve to provoke threats of unlawful and violent opposition as a convenient method to silence minority expression. Such a result should not be sanctioned when important constitutional rights are at stake. *Cooper v. Aaron*, 358 U. S. 1, 14; *Terminiello v. Chicago*, 337 U. S. 1; *Sellers v. Johnson*, *supra*; *Rockwell v. Morris*, *supra*. "Carried to its logical conclusion, th[is] rule would result in civil-authorities suppressing lawlessness by compelling the surrender of the intended victims of lawlessness. The banks could be closed and emptied of their cash to prevent bank robberies; the post office locked to prevent the mails being robbed; the citizens kept off the streets to prevent holdups; and a person accused of murder could be properly surrendered to the mob which threatened to attack the jail in which he was confined." *Strutwear Knitting Co. v. Olsen*, 13 F. Supp. 384, 391 (D. C. Minn. 1936).

³ See *Beatty v. Gillbanks* (1882) L. R. 9 Q. B. Div. (Eng) holding street paraders not guilty of breach of the peace for parade they knew would cause violent opposition.

CONCLUSION

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

JACK GREENBERG

CONSTANCE BAKER MOTLEY

JAMES M. NABRIT, III

MICHAEL MELTSNER

10 Columbus Circle

New York 19, New York

MATTHEW J. PERRY

LINCOLN C. JENKINS, JR.

1107½ Washington Street

Columbia 1, South Carolina

DONALD JAMES SAMPSON

Greenville, South Carolina

Attorneys for Petitioners

APPENDIX

IN THE RICHLAND COUNTY COURT

THE STATE

—v.—

JAMES EDWARDS, JR., *et al.*

ORDER

This is an appeal from conviction in magistrate's court of the common law crime of breach of the peace. There are almost 200 appellants, who were convicted by the magistrate, City of Columbia, Richland County, in four trials, trial by jury having been waived by the appellants in each case. By stipulation between counsel for the appellants and the counsel for the State, the appeals will be treated here as one since the facts and applicable law were substantially the same in each case. The trial Magistrate imposed fines upon each of the appellants ranging from \$10.00 to \$100.00. Due and timely notice of appeal from conviction was served and oral arguments were heard before me in open court. At my suggestion and with the agreement of counsel for both sides, written briefs were filed.

The appellants except to the finding of the Magistrate's Court and the fines imposed as a result of such finding of guilt upon the grounds that the State by the evidence failed to establish the *corpus delicti*, that the State failed to prove a *prima facie* case, that the evidence showed that the police powers of the State of South Carolina were used against the appellants to deprive them of

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the right of freedom of speech guaranteed by the Constitution of the United States and the Constitution of South Carolina, and that the evidence presented before the Magistrate showed only that the appellants at the time of their arrests were engaged in a peaceful and lawful assemblage of persons, orderly in every respect upon the public streets of the State of South Carolina.

Testimony before the Magistrate sets out the following series of events which culminated in the arrest of the appellants and the issuance of warrants charging them with breach of the peace. Shortly before noon on the third day of March, 1961, the appellants, acting in concert and with what appeared to be a preconceived and definite plan, proceeded on foot along public sidewalks from Zion Baptist Church in the City of Columbia to the State House grounds, a distance of approximately six city blocks. They walked in groups of twelve to fifteen each, the groups being separated by a few feet. Testimony shows that the purpose of this assemblage and movement of students was to walk in and about the grounds of the State House protesting, partly by the use of numerous placards, against the segregation laws of this State. The General Assembly was in session at the time.

Upon their approach to an area in front of and immediately adjacent to the State House building, known as the "horseshoe", the Negro students were met by police authorities of the State and the City of Columbia. After brief conversation between the leader of the students and police officers, the students proceeded to walk in and about the State House grounds displaying placards, some of which, at least, might be termed inflammatory in nature. There is some evidence also that a few groups of students were singing during this period. Such activity continued

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for approximately 45 minutes during which the students met with no interference from anyone. Testimony from city and state authorities was to the effect that during this period of time, while the students were marching in and about the grounds without hindrance from officers, large numbers of onlookers, evidently attracted by the activity of the students, had gathered in the "horseshoe" area, entirely blocking the vehicular traffic lane and interfering materially with the movement of pedestrian traffic on the sidewalks in the area and on city sidewalks immediately adjacent. Testimony of city and state authorities was that vehicular traffic on the busy downtown streets of Gervais and Main, one running alongside the grounds and the other "dead-ending" at the State House, was noticeably and adversely affected by the large assemblage of students and onlookers which had filled the "horseshoe" area and overflowed into Gervais and Main Streets. Some testimony disclosed that in and about the "horseshoe" area it was necessary for the police to issue increasingly frequent orders to keep pedestrian traffic moving, even at a slow rate.

The Chief of Police of the City of Columbia and the City Manager of the City of Columbia testified that they recognized in the crowd of onlookers persons whom they knew to be potential troublemakers. It was at this time that the police authorities decided that the situation had become potentially dangerous and that the activities of the students should be stopped. The recognized and admitted leader of the students was approached by city authorities and informed that the activities of the students had created a situation which in the opinion of the officers was potentially dangerous and that such activities should cease in the interest of the public peace and safety. The

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students were told through their leader that they must disperse in 15 minutes. The leader of the students, accompanied by the City Manager of Columbia, went from one group of students to the other, informing them of the decision and orders of the police authorities.

The City Manager testified that the leader of the students refused to instruct or advise them to desist and disperse but that instead he "harangued" the students, whipping them into what was described by the City Manager as a semi-religious fervor. He testified that the students, in response to the so-called harangue by their leader, began to sing, clap their hands and stamp their feet, refusing to stop the activity in which they were engaged and refusing to disperse. After 15 minutes of this activity the students were arrested by state and city officers and were charged with the crime of breach of the peace.

With regard to the position taken by the appellants that their activities in the circumstances set forth did not constitute a crime, the attention of the Court has been directed to several of our South Carolina cases upon this point, one of them being the case of *State v. Langston*, 195 S. C. 190, 11 S. E. (2d) 1. The defendant in that case was a member of a religious sect known as Jehovah's Witnesses. He, with others, went on a Sunday to the homes of other persons in the community and played records on the porches announcing his religious beliefs to anyone who would listen. He also employed a loud speaker mounted on a motor vehicle to go about the streets for the same purpose. Crowds of persons were attracted by this activity. No violence of any kind occurred. Upon his refusal to obey orders of police officers to cease such activity, the defendant was arrested and convicted for breach of the peace. The Court in upholding the conviction said:

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"It certainly cannot be said that there is not in this State an absolute freedom of religion. A man may believe what kind of religion he pleases or no religion, and as long as he practices his belief without a breach of the peace, he will not be disturbed.

"In general terms, a breach of the peace is a violation of public order, the disturbance of public tranquility, by any act or conduct inciting to violence.

"It is not necessary that the peace be actually broken to lay the foundation of prosecution for this offense. If what is done is unjustifiable, tending with sufficient directness to break the peace, no more is required."

With further reference to the argument advanced by the appellants that they had a constitutional right to engage in the activities for which they were eventually charged with the crime of breach of the peace, regardless of the situation which was apparently created as a result of such activities, this Court takes notice of the New York State case of *People v. Feiner*, 300 N. Y. 391, 91 N. E. (2d) 319. In that case the Court of Appeals of the State of New York wrote an exhaustive opinion in a case which arose in that State in 1950, the factual situation being similar in many respects to the cases presently before this Court upon appeal.

Feiner, a University student, stationed himself upon one of the city streets of the City of Syracuse and proceeded to address his remarks to all those who would listen. The general tenor of his talk was designed to arouse Negro people to fight for equal rights, which he told them they did not have. Crowds attracted by Feiner began to fill up the sidewalks and overflow into the street. There was no

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disorder, but in the opinion of police authorities there was real danger of a disturbance of public order or breach of the peace. Feiner was requested by police to desist. He refused. The arrest was then made and Feiner was charged and convicted of disorderly conduct.

In upholding the conviction, the New York Court quoting from *Cantwell v. State of Connecticut*, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A. L. R. 1352, said:

"The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts, but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets or other immediate threat to public safety, peace or order appears, the power of the State to prevent or punish is obvious."

The appellants in the present case have emphasized repeatedly in the trials and in their arguments before the Court and in their Brief that no one of them individually committed any single act which was a violation of law. It is their contention that they had a right to assemble and act as they did so long as they did no other act which was in itself unlawful. Apparently they reject the proposition that an act which is lawful in some circumstances might be unlawful in others. The New York Court in answering a similar contention made by the defendant in the *Feiner* case said:

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"We are well aware of the caution with which the courts should proceed in these matters. The intolerance of a hostile audience may not in the name of order be permitted to silence unpopular opinions. The Constitution does not discriminate between those whose ideas are popular and those whose beliefs arouse opposition or dislike or hatred—guaranteeing the right of freedom of speech to the former and withholding it from the latter. We recognize, however, that the State must protect and preserve its existence and unfortunate as it may be, the hostility and intolerance of street audiences and the substantive evils which may follow therefrom are practical facts of which the Courts and the law enforcement officers of the State must take notice. Where, as here, we have a combination of an aroused audience divided into hostile camps, an interference with traffic and a speaker who is deliberately agitating and goading the crowd and the police officers to action, we think a proper case has been made out under our State and Federal Constitutions for punishment."

In the present case the appellants were not prevented from engaging in their demonstration for a period of approximately an hour, nor were they hindered in any way. After such activity had gone on for approximately 45 minutes, police officers saw that streets and sidewalks had been blocked by a combination of students and a crowd of 200 or 300 onlookers which had been attracted by their activities. They recognized potential troublemakers in the crowd of onlookers which was increasing by the minute. State and city authorities testified that in their opinions the situation which had been created by the students had

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reached a point where it was potentially dangerous to the peace of the community. Instead of taking precipitous action even at this point, police authorities ordered the students to cease their activities and disperse, giving them the reasons for such order. The students were told that they must cease their activities in 15 minutes. The students refused to desist or to disperse. There is no indication whatever in this case that the acts of the police officers were taken as a subterfuge or excuse for the suppression of the appellants' views and opinions. The evidence is clear that the officers were motivated solely by a proper concern for the preservation of order and the protection of the general welfare in the face of an actual interference with traffic and an imminently threatened disturbance of the peace of the community.

Petitioning through the orderly procedures of the Courts for the protection of any rights, either invaded or denied, has been followed by the American people for many years. It is the proper and the correct course to pursue if one is sincerely seeking relief from oppression or denial of rights. While it is a constitutional right to assemble in a hall to espouse any cause, no person has a right to organize demonstrations which any ordinary and reasonable thinking citizen knows or reasonably should know would stir up passions and create incidents of disorder.

The State of South Carolina, the City of Columbia, and the County of Richland in the exercise of their general police powers of necessity have the authority to act in situations such as are detailed in the evidence in these cases and if the conduct of their duly appointed officers of the law is not arbitrary, capricious and the result of prejudice but is founded upon clear, convincing and common sense reasoning, there is no denial of any right.

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Order

All exceptions of the appellants are overruled and the convictions and sentences are affirmed.

/s/ LEGARE BATES,
*Senior Judge, Richland County
Court.*

Columbia, South Carolina,
July 10th, 1961.

Opinion of the Supreme Court of South Carolina**THE STATE OF SOUTH CAROLINA****IN THE SUPREME COURT**

THE STATE,*Respondent,*

—v.—

JAMES EDWARDS, JR., et al.,*Appellants.*

**APPEAL FROM RICHLAND COUNTY, LEGARE BATES, COUNTY JUDGE
AFFIRMED**

LEWIS, A.J.:

The appellants; one hundred eighty seven in number, were convicted in the Magistrate's Court of the common law crime of breach of the peace. The charges arose out of certain activities in which the appellants were engaged in and about the State House grounds in the City of Columbia on March 2, 1961. The only question involved in their appeal to this Court is whether or not the evidence presented to the trial Court was sufficient to sustain their conviction. Conviction was sustained by the Richland County Court, from which this appeal comes. While the appellants have argued that their arrest and conviction deprived them of their constitutional rights of freedom of speech and assembly, guaranteed to them by both the State and Federal Constitutions, it is conceded in argument before us that whether or not any constitutional right was denied to them is dependent upon their guilt or innocence of the crime charged under the facts presented

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to the trial Court. If their acts constituted a breach of the peace, the power of the State to punish is obvious. *Feiner v. New York*, 71 S. Ct. 303, 340 U. S. 315, 95 L. Ed. 295.

It is well settled that the trial Court must be affirmed if there is any competent evidence to sustain the charges and, in determining such question, the evidence and the reasonable inferences to be drawn therefrom must be viewed in the light most favorable to the State.

The testimony discloses the following events which resulted in the arrest of the appellants and the issuance of warrants charging them with breach of the peace.

Shortly before noon on March 2, 1961, a group of approximately 200 Negro students, after attending a meeting at the Zion Baptist Church in the City of Columbia, walked in groups of approximately fifteen each from the church along public sidewalks to the State House grounds, a distance of approximately six blocks. The purpose of the movement of the group to the State House was to parade about the grounds in protest to the General Assembly and the general public against the laws and customs of the State relative to segregation of the races, such demonstration to continue until, as the testimony shows, their conscience told them that the demonstration had lasted long enough. The General Assembly was in session at the time.

As they reached the State House grounds, the group was met by police authorities of the State and the City of Columbia. After a brief conference between their leader and police officers, the group proceeded to parade about the State House grounds. They continued to parade around the State House for approximately forty-five minutes during which time they met with no interference. During this forty-five minute period a crowd, evidently at-

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tracted by the activities of the paraders, began gathering in the area in front of the State House, known as the "horseshoe", blocking the lanes for vehicular traffic through such area and materially interfering with the movement of pedestrian traffic on the sidewalks in the area and on sidewalks immediately adjacent. Vehicular traffic on the adjacent city streets was noticeably and adversely affected by the large assemblage of paraders and the crowd which had overflowed the horseshoe area into the adjacent streets.

The traffic situation can best be understood in relation to the area involved. Columbia is the State Capitol. Main and Gervais Streets in Columbia intersect in front of the State House. Gervais Street runs in an east-west direction, along the northern side of the State House grounds. Main Street, running north and south, intersects Gervais Street in front of the State House, where it dead-ends. The area referred to as the "horseshoe" is in effect a continuation of Main Street into the State House grounds. It is about $\frac{1}{4}$ block in length and about the width of Main Street. Situated at the center of the entrance to the "horseshoe" is a monument, with space on each side for vehicular traffic to enter and leave the area. It is reserved for parking of vehicles and, on the occasion in question, was filled with automobiles. It is a violation of law to block or impede traffic in the area. Section 1-417. Cumulative Supplement, 1952 Code of Laws. Sidewalks are located around the area for use by pedestrians.

The intersection of Main and Gervais Streets in front of the State House in Columbia is, by common knowledge, one of the busiest intersections in the State of South Carolina, both from the standpoint of vehicular and pedestrian traffic.

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On the occasion in question, in addition to the approximately 200 paraders in the area, there had gathered approximately 350 onlookers and the crowd was increasing. With the paraders and the increasingly large number of onlookers congregated in the above area seriously affecting the flow of pedestrian and vehicular traffic, the officers approached the admitted leader of the paraders and informed him that the situation had reached the point where the activities of the group should cease. They were told through their leader that they must disperse within fifteen minutes. The parade leader, accompanied by the police authorities, went among the paraders and informed them of the decision and orders of the police. The leader of the group refused to instruct or advise them to disperse but instead began a fervent speech to the group and in response they began to sing, shout, clap their hands and stamp their feet, refusing to disperse. After about fifteen minutes of this noisy demonstration, the appellants, who were engaging in the demonstration, were arrested by State and City officers and charged with the crime of breach of the peace. Upon the trial, all of the appellants were identified as participants in the parade and activities out of which the charge arose.

The warrants issued against appellants charge that they "on March 2, 1961, on the State Capitol grounds, on adjacent sidewalks and streets, did commit a breach of the peace in that they, together with a large group of people, did assemble and impede the normal traffic, singing and parading with placards, failed to disperse upon lawful orders of police officers, all of which tended directly to immediate violence and breach of the peace in view of existing conditions."

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"Breach of the peace is a common law offense which is not susceptible to exact definition. It is a generic term, embracing 'a great variety of conduct destroying or menacing public order and tranquility'. *Cantwell v. State of Connecticut*, 310 U. S. 296, 60 S. Ct. 900, 905, 84 L. Ed. 1213, 128 A. L. R. 1352." *State v. Randolph*, 239 S. C. 79, 121 S. E. (2d) 349.

The general definition of the offense of breach of the peace approved in our decisions is that found in 8 Am. Jur. 834, Section 3 as follows: "In general terms, a breach of the peace is a violation of public order, a disturbance of the public tranquillity, by any act or conduct inciting to violence . . . , it includes any violation of any law enacted to preserve peace and good order. It may consist of an act of violence or an act likely to produce violence. It is not necessary that the peace be actually broken to lay the foundation for a prosecution for this offense. If what is done is unjustifiable and unlawful, tending with sufficient directness to break the peace, no more is required. Nor is actual personal violence an essential element in the offense. . . .

"By 'peace,' as used in the law in this connection, is meant the tranquillity enjoyed by citizens of a municipality or community where good order reigns among its members, which is the natural right of all persons in political society."

See: *Soulios v. Mills Novelty Co.*, 198 S. C. 355, 17 S. E. (2d) 869; *State v. Langston*, 195 S. C. 190, 11 S. E. (2d) 1; *Childers v. Judson Mills Store*, 189 S. C. 224, 200 S. E. 770; *Webber v. Farmers Chevrolet Co.*, 186 S. C. 111, 195 S. E. 139; *Lyda v. Cooper*, 169 S. C. 451, 169 S. E. 236.

In determining whether the acts of the appellants constituted a breach of the peace, we must keep in mind that

Opinion of the Supreme Court of South Carolina

the right of the appellants to hold a parade to give expression to their views is not in question. They were not arrested for merely holding a parade, nor were they arrested for the views which they held and were giving expression. Rather, appellants were arrested because the police authorities concluded that a breach of the peace had been committed.

The parade was conducted upon the State House grounds for approximately forty-five minutes. It was not until the appellants and the crowd, attracted by their activities, were impeding vehicular and pedestrian traffic upon the adjacent streets and sidewalks that the officers intervened in the interest of public order to stop the activities of the appellants at the time and place. Notice was given to appellants by the officers that the situation had reached the point where they must cease their demonstration. They were given fifteen minutes in which to disperse. The orders of the police officers under all of the facts and circumstances were reasonable and motivated solely by a proper concern for the preservation of order and prevention of further interference with traffic upon the public streets and sidewalks. The appellants not only refused to heed and obey the reasonable orders of the police, but engaged in a fifteen minute noisy demonstration in defiance of such orders.

The acts of the appellants under all the facts and circumstances clearly constituted a breach of the peace.

Affirmed.

TAYLOR, C.J., OXNER, LEGGE and MOSS, JJ., concur.

cause their activities "tended" to result in unlawful conduct on the part of other persons opposing petitioners' views. The two concluding paragraphs of the opinion set forth with clarity the Court's reasons for affirming the convictions:

STATEMENT

"The parade was conducted upon the State House grounds for approximately forty five minutes. It was not until the appellants and the crowd, attracted by their activities, were impeding vehicular and pedestrian traffic upon the adjacent streets and sidewalks that the officers intervened in the interest of public order to stop the activities of the appellants at the time and place. Notice was given to appellants by the officers that the situation had reached the point where they must cease their demonstration. They were given fifteen minutes in which to disperse. The orders of the police officers under all of the facts and circumstances were reasonable and motivated solely by a proper concern for the preservation of order and prevention of further interference with traffic upon the public streets and sidewalks. The appellants not only refused to heed and obey the reasonable orders of the police, but engaged in a fifteen-minute noisy demonstration in defiance of such orders.

"The acts of the appellants under all the facts and circumstances clearly constituted a breach of the peace."

The opinion of the Supreme Court of South Carolina is in accord with principles enunciated by this Court in *Feiner v. New York*, 340 U. S. 313.

Denial of Petition for Rehearing
IN THE SUPREME COURT OF SOUTH CAROLINA

THE STATE,

Respondent,

—against—

JAMES EDWARDS, JR., *et al.*,

Appellants.

CERTIFICATE

I, Harold R. Boulware, hereby certify that I am a practicing attorney of this Court and am in no way connected with the within case. I further certify that I am familiar with the record of this case and have read the opinion of this Court which was filed December 5, 1961, and in my opinion there is merit in the Petition for Rehearing.

/s/ HAROLD R. BOULWARE
Harold R. Boulware

Columbia, South Carolina
December 13, 1961

(Indorsed on back of this document):

Petition denied.

s/ C. A. TAYLOR

s/ G. DEWEY OXNER

s/ LIONEL K. LEGGE

s/ JOSEPH R. MOSS

s/ J. WOODROW LEWIS

Supreme Court of the United States

Office Supreme Court, U.S.
FILED

MAY 2 1962

JOHN F. DAVIS, CLERK

OCTOBER TERM, 1961 **2**

No. **6**

JAMES EDWARDS, JR., AND 186 OTHERS, PETITIONERS,

versus

STATE OF SOUTH CAROLINA

BRIEF IN OPPOSITION

DANIEL R. McLEOD,

Attorney General of S. C.,

J. C. COLEMAN, JR.,

EVERETT N. BRANDON,

Assistant Attorney General,

Wade Hampton Building,

Columbia, South Carolina,

Attorneys for Respondent.

Office Supreme Court, U.S.
FILED

SEP 17 1962

JOHN F. DAVIS, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1962

No. 86

JAMES EDWARDS, JR., *et al.*,

Petitioners,

—v.—

STATE OF SOUTH CAROLINA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF SOUTH CAROLINA

BRIEF FOR PETITIONERS

JACK GREENBERG
CONSTANCE BAKER MOTLEY
JAMES M. NABRIT, III
MICHAEL MELTSNER
10 Columbus Circle
New York 19, New York

MATTHEW J. PERRY
LINCOLN C. JENKINS, JR.
1107½ Washington Street
Columbia, South Carolina

DONALD JAMES SAMPSON
125½ Falls Street
Temple Building
Greenville, South Carolina

Attorneys for Petitioners

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Supreme Court of the United States

OCTOBER TERM, 1961

No.

JAMES EDWARDS, JR., AND 186 OTHERS, PETITIONERS,

versus

STATE OF SOUTH CAROLINA

BRIEF IN OPPOSITION

QUESTION PRESENTED

Where there was sufficient evidence before the trial court to sustain conviction of petitioners of the common law crime of breach of the peace, even though the acts out of which the charges arose were done in the course of the exercise of petitioners' constitutional right to assemble and petition for redress of grievances.

STATEMENT

Petitioners, approximately two hundred strong, approached the State House grounds in the City of Columbia and announced that they intended to march in and about the grounds for the purpose of protesting certain laws of

the State with which they were not in agreement (R. 83, R. 138). They proceeded to walk in and about the grounds in organized groups for approximately forty-five minutes without hindrance from anyone (R. 85).

Police officers had been stationed in the area for the purpose of maintaining order, and both the City Manager and the Chief of Police of the City of Columbia were present during the entire episode (R. 50). Not only were petitioners permitted to demonstrate for nearly an hour without interference (R. 43), but they did so under protection of police officers. It was not until a breach of public order had actually occurred, caused by the activities of petitioners, that police authorities ordered petitioners to desist. A crowd of 300-350 onlookers, attracted by the activities of petitioners, had gathered, blocking sidewalks and streets, and adversely affecting traffic on adjacent streets (R. 44). Potential "troublemakers", known to police, were seen in the crowd attracted to the scene by the petitioners (R. 33). In the opinion of responsible City authorities, a situation had developed which was potentially dangerous (R. 165).

Upon receiving instructions by the City Manager to disperse, petitioners refused to do so, expressing their defiance by loud singing, shouting, chanting and stamping of feet (R. 40, R. 166), deliberately making a bad situation worse. It was not until after all these events had taken place that the arrests of petitioners were effected.

ARGUMENT

There is no conflict in the decision of the State Court with any principle enunciated by this Court.

The opinion of the State Court, set forth in the petition, pp. 10a-15a, appendix, does not hold, as is inferred by petitioners in the second question presented, p. 2, petition, that the convictions of petitioners could be affirmed be

CONCLUSION

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

DANIEL R. McLEOD,

Attorney General of S. C.,

J. C. COLEMAN, JR.,

EVERETT N. BRANDON,

Assistant Attorney General,

Wade Hampton Building,

Columbia, South Carolina,

Attorneys for Respondent.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1962

No. 86

JAMES EDWARDS, JR., *et al.*,

Petitioners,

—v.—

STATE OF SOUTH CAROLINA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF SOUTH CAROLINA

BRIEF FOR PETITIONERS.

Opinions Below

The opinion of the Supreme Court of South Carolina (R. 197-201) is reported at — S. C. —, 123 S. E. 2d 247 (1961). The opinion of the Richland County Court is not reported and is set out in the printed record (R. 188-194).

Jurisdiction

The judgment of the Supreme Court of South Carolina was entered December 5, 1961 (R. 197). The Supreme Court of South Carolina denied rehearing December 27, 1961 (R. 202-204). Petition for writ of certiorari was filed in this Court March 27, 1962 and was granted May 14, 1962. The jurisdiction of this Court rests on 28 U. S. C. §1257(3).

Constitutional Provision Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Questions Presented

Whether petitioners were denied due process of law as secured by the Fourteenth Amendment to the Constitution of the United States:

1. When arrested and convicted on warrants charging common law breach of the peace in that petitioners' conduct, an assembly on the grounds of the South Carolina State House to express opposition to the State's policy of racial segregation, "tended directly to immediate violence and breach of the peace," on a record containing no evidence of threatened, imminent or actual violence or disorder.

2. When arrested and convicted of common law breach of the peace on the ground that their conduct, peaceful and orderly exercise of their rights of free speech and assembly allegedly "tended" to result in "possible violence" and minor interference with traffic.

Statement

Petitioners were charged with the crime of common law breach of the peace on warrants alleging that they:

... on March 2, 1961, on the State Capitol grounds, on adjacent sidewalks and streets, did commit a breach of the peace in that they, together with a large group of people, did assemble and impede the normal traffic, singing and parading with placards, failed to disperse upon lawful orders of police officers, all of which

tended directly to immediate violence and breach of the peace in view of existing conditions (R. 2-3).

Petitioners were tried before the Columbia City Magistrate in four trials on the 7th (R. 2-62), 13th (R. 66-124), 16th (R. 126-77), and 27th (R. 178-88) of March, 1961. As the facts and applicable law were substantially the same in each case, counsel stipulated that the appeals be treated as one case as they were by the Supreme Court of South Carolina (R. 188, 197).

The genesis of these criminal prosecutions lies in a decision of various high school and college students in Columbia, South Carolina to protest to the State Legislature and government officials against racial segregation:

"To protest to the citizens of South Carolina, along with the Legislative Bodies of South Carolina, our feelings and our dissatisfaction with the present condition of discriminatory actions against Negroes, in general, and to let them know that we were dissatisfied and that we would like for the laws which prohibited Negro privileges in this State to be removed" (R. 111).

The Police Chief agreed that the demonstration was part of "a widespread student movement which is designed to possibly bring about a change in the structure of racial segregation laws and custom" (R. 40).

The 187 petitioners, mostly high school and college students in the Columbia area, met at the Zion Baptist Church on March 2, 1961, divided into groups of 15 to 18 and proceeded to the State House grounds (R. 6, 67, 109, 136).

The State House is occupied by the Executive, Judicial and Legislative branches of the government of the State of South Carolina. The State Legislature was in session at the time (R. 30).

The State House is in a park approximately two square blocks in area (R. 135) bordered by a sidewalk (R. 128). In front of the State House is a horseshoe shaped area "used primarily for the parking of State official's cars" (R. 99, 128). No vehicle attempted to use this area during the demonstration (R. 43, 96). At the perimeter of this parking area are sidewalks, serving as entrance and exit for those having business in the State House, which lead into the State House and park (R. 128).

The students proceeded from the church to the parking area in these small groups which were, as one of the students put it, about half a block apart, or as the Chief of Police put it, about a third of a block apart (R. 110, 86, 136), although occasionally they moved closer together (R. 86). But, "there never was at any time any one grouping of all these persons together" (R. 89-90).

As the groups arrived at the front of the State House, they were informed by the police "that they had a right, as a citizen, to go through the State House grounds, as any other citizen has, as long as they were peaceful" (R. 35, 38-39, 84, 130-131). Their permission, however, was limited to being "allowed to go through the State House grounds one time for purposes of observation" (R. 130-131 and see R. 156). This took about half an hour to forty-five minutes (R. 35, 132). As they went through the park they carried signs, such as "I am proud to be a Negro," and "Down with segregation" (R. 110, 114). The general feeling of the group was that segregation in South Carolina was against general principles of humanity and should be abolished (R. 111). Policemen were stationed throughout the park as the groups of students circled the State House (R. 22-23, 88).

As the groups returned to the parking area they were met by City Manager McNayr who ordered them to dis-

perse and to leave the State House grounds (R. 13). When they did not comply, they were lined up and marched to the City and County jails (R. 16).

There is dispute in the record whether it was before or after arrest (Compare R. 31-32 with R. 112) that the students commenced singing religious songs and the "Star Spangled Banner" and otherwise vocally expressing themselves, but there is agreement that none of this occurred until *after* the police ordered the students to end their "walk" and leave the grounds (R. 31, 45, 74). At this time, as the City Manager described it, there was "a singing, chanting, shouting response, such as one would get in a religious atmosphere . . ." (R. 74).

The students were at all times well demeaned, well dressed, orderly and peaceful (R. 24). The City Manager disagreed with this designation only to the extent that the students engaged in religious and patriotic singing after being told to disperse. He found this "flamboyant", "boisterous", and disrespectful to him personally (R. 24, 80). There was no evidence suggesting that the onlookers, who were attracted by the demonstration and the presence of police (R. 41), were anything but curious (R. 25, 27-29, 31, 41, 48, 152). Totally absent from this record are instances of threatening remarks, hostile gestures, profanity or body contact.

There was no evidence that violence occurred or was threatened by either students or onlookers. The City Manager, however, testified that among the onlookers he noticed "possible trouble makers" (R. 27), but he "took no official action against [the possible trouble makers] because there was none to be taken. They were not creating a disturbance, those particular people were not at the time doing anything to make trouble but they could have been." He did not even "talk to the trouble makers" (R. 27-30).

When the "trouble makers" were "told to move on from the sidewalks" they complied (R. 31, 41, 92).

The City Manager stated that thirty to thirty-five officers were present (R. 19). The Police Chief of Columbia testified that fifteen of his officers were present in addition to whom were State Highway Patrolmen, South Carolina Law Enforcement officers, and three Deputy Sheriffs (R. 40, 41). This was, in the City Manager's words "ample police protection" (R. 135). But he believed that "simply because we had ample policemen there for their protection and the protection of others, is no reason for not placing them under arrest when they refused a lawful request to move on" (R. 135).

The police had no particular trouble makers in mind. They merely thought that "you don't know what might occur and what is in the mind of the people" (R. 41). Asked, "you were afraid trouble might occur; from what source?" the Chief replied "you can't always tell" (R. 43). Asked, "are you able, sir, to say where the trouble was?" he replied, "I don't know" (R. 44). None of the potential "trouble makers" was arrested and pedestrians ordered to "move on at [the Chief's] command" did so (R. 92).

Concerning obstruction of the streets or sidewalks bordering the State House grounds, there is similarly no evidence. The City Manager testified that the onlookers did not block traffic on the streets (R. 26). While the students "probably did" slow traffic while waiting for traffic signals on their way to the State House (R. 88-90), once there, they were wholly within the grounds (R. 22-23, 42, 135). Their singing, after being told to disperse, slowed traffic on a City street across from the State House grounds (R. 75) but a police officer was dispatched and kept it moving (R. 36). The police were in complete control of any traffic problems (R. 43, 135). There was no evidence at all, as

stated in the warrants, that traffic congestion tended to any violence.

The City Manager testified that the onlookers blocked the sidewalks bordering the demonstration (R. 26). But they cleared the sidewalks when the police so ordered (R. 27, 42-43 and see R. 39). Pedestrians could move to their destinations both on the State House grounds and the city streets (R. 42-43).

In any event it was not interference with pedestrians or automobiles which the police acted to curtail. The City Manager who was supervising the police department at the time testified that "my official reason for dispersing the crowd was to avoid possible conflict, riot and dangers to the general public and, of course, included in the general public, was danger to these various students themselves" (R. 14). The Chief of Police acted "to keep down any type of violence or injury to anyone" (R. 37 and see R. 43, 81, 82, 85 to the same effect).

The trial court sitting without a jury found the students guilty of common law breach of the peace. The Court imposed fines of \$100 or 30 days in jail in most cases; in many of these cases one-half of the fine was suspended. In a few cases the defendants were given \$10 fines or five days in jail (R. 62-64; 124-25; 175-77; 186-87).

The Richland County Court affirmed, principally upon authority of *People v. Feiner*, 300 N. Y. 391, 91 N. E. 2d 319, aff'd 340 U. S. 315, concluding there was a "dangerous" (R. 193) situation and actions which a "reasonable thinking citizen knows or should know would stir up passions and create incidents of disorder" (R. 194).

The Supreme Court of South Carolina affirmed on the ground that:

"The orders of the police officers under all of the facts and circumstances were reasonable and motivated solely by a proper concern for the preservation of order and prevention of further interference with traffic upon the public streets and sidewalks" (R. 201).

Throughout the proceedings in the South Carolina courts, petitioners, by timely exception, raised and preserved federal constitutional questions. This Court granted Petition for Writ of Certiorari on May 14, 1962.

ARGUMENT

I.

Petitioners' Arrest and Conviction on Warrants Charging That Their Conduct "Tended Directly to Immediate Violence and Breach of the Peace" Is Unconstitutional in That It Rests on No Evidence of Violence, Threatened Violence or Disorder.

Petitioners' arrest and conviction of common law breach of the peace followed their publicly expressed disapproval of the racial segregation policies of the State of South Carolina. Petitioners were charged on warrants alleging that:

"On March 2, 1961, on State Capitol grounds, on adjacent sidewalks and streets, did commit a breach of the peace in that they, together with a large group of people, did assemble and impede normal traffic singing and parading with placards, failed to disperse upon lawful orders of police officers, *all of which tended directly to violence and breach of the peace* in view of existing conditions" (R. 2-3, 126, 183). (Emphasis added.)

As freedom of expression is involved the Constitution requires proof of a substantial evil that rises far above public inconvenience, annoyance, and unrest and a clear and present danger that this evil will occur. *Cantwell v. Connecticut*, 310 U. S. 296, 311. The Supreme Court of South Carolina modified this constitutional standard (R. 197, 200-01), defining unlawful breach of the peace as "a violation of public order, a disturbance of the public tranquility, by any act *inciting to violence*, . . . *It may consist of an act of violence or an act likely to produce violence* (R. 200) (emphasis added).

As the warrants charged petitioners with conduct which "tended directly to immediate violence and breach of the peace," they cannot be convicted of some other crime. Conviction of an accused for a charge that was never made is a violation of due process. *Cole v. Arkansas*, 333 U. S. 196; *De Jonge v. Oregon*, 299 U. S. 353, 362.

It is equally true that an accused cannot be convicted "upon a charge for which there is no evidence." *Garner v. Louisiana*, 368 U. S. 157; *Thompson v. Louisville*, 362 U. S. 199, 206; *Taylor v. Louisiana*, 370 U. S. 154.

But this record is entirely without proof of violence or threatened violence on the part of the petitioners. On the contrary, the testimony of the City Manager of the City of Columbia, the person in charge of police officers at the scene, and the Chief of Police of the City of Columbia fails to reveal a single overt act of any kind which could be considered violent or to presage violence.

Equally true, there was no evidence of violence or threatened violence by onlookers. The City Manager described them as curious (R. 25). The most that can be said is that the City Manager spotted unnamed people in the crowd who were recognized as "possible trouble-makers" (R. 27), or "potential trouble" (R. 29). Yet none

of these "trouble makers" refused to move on when told to by the police. None complained or made threatening remarks or gestures or did anything at all to distinguish themselves (R. 31). None gave any cause for arrest (R. 27, 81-82, 148). At one point the Chief of Police even refused to characterize any of the onlookers as trouble makers, testifying that it was difficult to know what was in the minds of the onlookers (R. 41).

A few direct quotations serve to illustrate that there was no actual or threatened violence. On cross-examination, the Chief testified (R. 43, 44):

Chief: We were afraid that trouble might have come.

Counsel: I see. You were afraid trouble might occur; from what source?

Chief: You can't always tell.

Counsel: But, if you regarded on this occasion it was sufficiently apparent to require you to arrest them, certainly you must have had something in mind?

Chief: It is my duty to try to avoid trouble if I can, as a police officer.

Counsel: I fully appreciate that. I certainly do, but I simply asked you, where was the trouble?

Chief: Actually any trouble hadn't happened but if you can prevent trouble, it is your duty to do so.

Counsel: I go along with that. Are you able, sir, to say where the trouble was?

Chief: I don't know.

The City Manager, McNayr, testified (R. 27, 28):

McNayr: I'm afraid that curiosity changes and brings forth possible elements which could create difficulty.

Counsel: Did you see any of those possible elements?

McNayr: Yes, I did, as I have on every occasion when these groups have demonstrated.

Counsel: Speaking of this particular occasion, did you see the possible elements there that day?

McNayr: Yes.

Counsel: Who were those persons?

McNayr: I can't tell you who they were. I can tell you they were present in the group. They were recognized as possible trouble makers.

Counsel: Did you and your police chief do anything about placing those people under arrest?

McNayr: No, we had no occasion to place them under arrest.

Counsel: Now, sir, you have stated that there were possible trouble makers and your whole testimony has been that, as City Manager, as supervisor of the City Police, your object is to preserve the peace and law and order?

McNayr: That's right.

Counsel: Yet you took no official action against people who were present and possibly might have done some harm to these people?

McNayr: We took no official action because there was none to be taken. They were not creating a disturbance, those particular people were not at that time doing anything to make trouble but they could have been.

Counsel: Did you order them off the State House grounds?

McNayr: They were not on the State House grounds, those that I observed.

Counsel: Did you order them off the streets adjacent?

McNayr: They were on public sidewalks and we made them clear the sidewalks so that people could get through.

Counsel: You don't know who these people were but nevertheless you recognized them as trouble makers?

McNayr: I don't know them by name—no.

Counsel: But the minute you spotted them, you knew they were trouble makers?

McNayr: I knew there was a possibility of trouble there.

Counsel: Yet you took no official action against them?

McNayr: The official action I took was to get rid of the cause of the possible difficulties.

Counsel: But you just said the Negro students weren't doing anything wrong, that is, in terms of misdemeanor?

McNayr: They were not obeying lawful orders, what I consider lawful orders in dispersing. They were the cause of the group gathering. The group, the so-called trouble makers, would never have appeared had it not been for the demonstration taking place.

(R. 135):

Counsel: You also stated that, in your judgment, you had ample police protection to handle the situation.

McNayr: That's correct.

The presence of the onlookers alone does not permit an inference of violence or threatened violence. This Court has rejected the contention that the unsubstantiated opinion of police officers as to possible disorder is sufficient to sustain criminal conviction. *Garner v. Louisiana*, 368 U. S. 157; *Taylor v. Louisiana*, 370 U. S. 154; *Thompson v. Louisville*, 362 U. S. 199. Cf. *Hague v. C. I. O.*, 307 U. S. 496, 516. Compared with the riotous circumstances of

Terminiello v. Chicago, 337 U. S. 1, 3 and the mob action in *Sellers v. Johnson*, 163 F. 2d 877 (8th Cir. 1947), cert. denied, 332 U. S. 851, the conduct shown by this record does not indicate even a remote threat to public order.

The warrants also charged that the students did "impede the normal traffic . . . which tended directly to immediate violence and breach of the peace" (R. 3, 126, 183). But clearly no violence occurred or was threatened. It is equally clear that there was no impediment to traffic sufficient to sustain these convictions, nor was it shown that traffic problems "tended directly to immediate violence."

The Supreme Court of South Carolina concluded that the adverse effect on traffic was a factor justifying their arrests and convictions although the City Manager and Chief of Police testified that the students were not arrested for this reason (R. 14, 37, 43, 81-82, 85, 135). But neither in the conduct of the petitioners nor the onlookers can one find in the record that the students impeded traffic.

The state's witnesses testified that the students approached the State House grounds in distinct small groups, about one-third or one half of a block apart walking in pairs or single file (R. 7, 8, 19, 39, 78). The only time there was any closer grouping was when the students were stopped by the State's officials (R. 86, 136, 137, 166) or when the students stopped to obey traffic regulations (R. 88-89).

There was no obstruction of pedestrian or vehicular traffic within the State House grounds. The Chief of Police testified that pedestrians could use the sidewalks on the State House grounds with no difficulty (R. 39, 42-43). The City Manager supported this view (R. 78-79). The horse-shoe area in front of the State Capitol, a limited parking area used by members of the State House of Representa-

tives and other officials, was where the groups were told to disperse and later arrested. No car attempted to get in or out of the area during the time the students were present (R. 11). The City Manager and Police Chief agreed that ample police protection was available to meet any problems which might arise (R. 134, 135).

There was no blocking of the streets outside the State House grounds (R. 26). The students themselves obeyed all traffic regulations (R. 88, 89). The most that can be said is that the vehicular traffic was slowed (R. 76). However, traffic signals were working (R. 154) and an officer was dispatched to keep traffic moving (R. 36). The need for policemen to help with the traffic cannot justify these arrests. If anything is a common occurrence in American life, it is the dispatching of a police officer to direct traffic when some event has occurred which attracts the curious.

The testimony shows that there were a number of on-lookers on the sidewalks bordering the State House grounds (R. 25, 26, 41, 152). Yet the City Manager and the police related that anyone blocking a sidewalk moved when asked and that passage was unimpeded (R. 27, 42, 43).

Absent some overt act of violence or actual interference with traffic, the police opinion of possible disorder, on which the Supreme Court of South Carolina rested its affirmance of these convictions, finds no support in the record.

II.

The Conviction of the Petitioners of Common Law Breach of the Peace Violated Their Rights of Free Speech and Assembly Under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

This Court has stated that the right of peaceful assembly is a right cognate to those of free speech and free press and equally fundamental. *De Jonge v. Oregon*, 299 U. S. 353, 364. Consequently, this Court has held that freedom of assembly can be abridged only when it is shown that there exists a clear and present danger to public safety. *Schenck v. United States*, 249 U. S. 47, 52; *Whitney v. California*, 274 U. S. 357, 376; *Cantwell v. Connecticut*, 310 U. S. 296, 308; *Thomas v. Collins*, 323 U. S. 516, 530.

Nowhere in the record is there any evidence of violence, actual or threatened. At most there are references to "possible troublemakers" among the onlookers, but not among the petitioners. These "troublemakers" were never identified and so slight was the possibility of danger from them, that the police failed to arrest even one. Petitioners' "communication considered, in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render [them] liable to conviction of the common law offense in question." *Cantwell v. Connecticut*, 310 U. S. 296, 311; cf. *Thornhill v. Alabama*, 310 U. S. 88, 105-106.

Under the circumstances the interests of the State were insufficient to justify restriction of freedom of speech and assembly. This Court has upheld the right to free speech in circumstances far more incendiary. *Terminiello v. Chicago*, 337 U. S. 1; *Hague v. C. I. O.*, 307 U. S. 496; *Kunz v.*

New York, 340 U. S. 290. Cf. *Sellers v. Johnson*, 163 F. 2d 877 (8th Cir. 1947) cert. denied 332 U. S. 851; *Rockwell v. Morris*, 10 N. Y. 2d 721, 176 N. E. 2d 836 (1961) cert. denied, 368 U. S. 913.

Petitioners assembled to express their dissatisfaction with the racially discriminatory policies of the State of South Carolina on the grounds of the State Legislative Building while the Legislature was in session. It is difficult to conceive of a more appropriate and effective time and place to exercise the rights of freedom of speech and assembly. Cf. *Hague v. C. I. O.*, 307 U. S. 496, 515; *United States v. Cruikshank*, 92 U. S. 542, 552.

Feiner v. New York, 340 U. S. 315, does not support these convictions. In that case, there was at least one threat of violence from onlookers (at p. 317). "[P]edestrians were forced to walk in the street to avoid the crowd. . . . The crowd was restless and there was some pushing, shoving and milling around" (p. 317). The "crowd was pressing closer around petitioner and the officer" (p. 318). The speaker had passed "the bounds of argument or persuasion and [had undertaken] incitement to riot" (p. 321).

In this case, however, there was no indication of threats from onlookers, traffic was not seriously hampered, the crowd was "curious," and there was no overt sign of hostility toward the petitioners. Moreover, according to the City Manager himself, enough peace officers were present to cope with the onlookers should trouble have occurred (R. 135).

If freedom of speech and of assembly are to be abridged, some overriding state interest, not merely a possibility of violence or slowdown of traffic, must be shown. The true interest and, indeed, duty of the State was to protect the petitioners in their peaceful expression, not arrest them on

account of the actions of others. Instead, there is even some evidence that state officials had decided to limit the assembly even before it was begun. The students were instructed by a public official that although permission was granted to go through the State House grounds once, "walking around and around is a breach of the peace. You have no right to go on these grounds for demonstration" (R. 156, 130-131). As this Court said in *Hague v. C. I. O.*, 307 U. S. 496, 516, "... uncontrolled official suppression of the privilege [of free speech] cannot be made a substitute for the duty to maintain order in connection with the exercise of the right." Surely if the police felt there was danger from "troublemakers" it was their duty to remove them, not petitioners. "Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgment of the rights of free speech and assembly." *Whitney v. California*, 274 U. S. 357, 378, Mr. Justice Brandeis concurring.

Without an obligation on the part of the police to take all reasonable measures to protect persons asserting their First Amendment rights, the freedoms guaranteed by the First Amendment will be largely lost. Those holding minority views will be subject to the arbitrary action of state authorities who fear "possible" violence. Expression will be dependent on the intensity of the opposition. Paradoxically, if the authorities have no duty to control tendencies to violence or impediments to traffic, the guarantees of freedom of expression will protect only the majority view or the popular view which needs no protection.

Moreover, if some slowing of vehicular and pedestrian traffic can uphold these convictions, South Carolina's use of common law breach of the peace is infected with the vice of vagueness. Petitioners were charged with the broad offense of common law breach of the peace. The Supreme

Court of South Carolina adopted the general definition found in 8 Am. Jur. 834 which extends to an act "of violence or an act likely to produce violence." Neither the general definition quoted by the Supreme Court of South Carolina nor the remainder of the section on Breach of the Peace, 8 Am. Jur. 835-37, delineates as breach of the peace, the holding of a nonviolent demonstration which causes slower traffic on streets and sidewalks. Petitioners have been unable to locate any South Carolina decision applying breach of the peace to any such situation or related situation.¹ As freedom of expression is involved, Mr. Justice Harlan's warning as to all-inclusive breach of the peace provisions is relevant, *Garner v. Louisiana*, 368 U. S. 157, 202:

"But when a State seeks to subject to criminal sanctions conduct which, except for a demonstrated paramount state interest, would be within the range of freedom of expression as assured by the Fourteenth Amendment, it cannot do so by means of a general and all-inclusive breach of the peace prohibition. It must bring the activity sought to be proscribed within the ambit of a statute or clause 'narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State.'"

To convict petitioners on the ground that their expression interfered with traffic would be to make this case like *Cantwell v. Connecticut*, 310 U. S. 296, 307-308. There, conviction was set aside on the ground that it was not pur-

¹ Compare the South Carolina cases cited by the Supreme Court of South Carolina, all but one of which deal with repossessing goods sold on the installment plan. *State v. Langston*, 195 S. C. 190, 11 S. E. 2d 1, the other case, upheld the conviction of a Jehovah's Witness who played phonograph records on the porches of private homes and used a sound truck.

suant to a narrowly drawn statute "evincing a legislative judgment that street discussion of religious affairs . . . should be regulated" (p. 308). Here, as in *Cantwell*, the situation is analogous "to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application" (*Ibid.*).

The vagueness of common law breach of the peace so applied is highlighted by the fact that petitioners were not charged with violating §1-417, of the 1952 Code of Laws of South Carolina (Cum. Supp. 1960), in which the legislature specifically addressed itself to the problem of traffic control in the State House area. Even if interference with traffic could uphold these convictions, the record fails to reveal the kind of significant traffic problems sufficient to justify abridging freedom of speech and assembly. *Cantwell v. Connecticut*, *supra*, at p. 308.

Without more of a showing of an imminent and serious danger to the public than is found in this record, South Carolina may not abridge freedom of speech and assembly. "The fact that speech is likely to result in some violence or

² §1-417 provides as follows:

"It shall be unlawful for any person:

- (1) Except State officers and employees and persons having lawful business in the buildings, to use any of the driveways, alleys or parking spaces appurtenant to any of the property of the State, bounded by Assembly, Gervais, Bull and Pendleton Streets in Columbia upon any regular weekday, Saturdays and holidays excepted, between the hours of 8:30 a. m., and 5:30 p. m., whenever the buildings are open for business; or
- (2) To park any vehicle except in spaces and manner marked and designated by the State Budget and Control Board, in cooperation with the Highway Department, or to block or impede traffic through the alleys and driveways."

in destruction of property is not enough to justify its suppression." Mr. Justice Brandeis, concurring, *Whitney v. California*, 274 U. S. 357, 378. And here we have no evidence of any disturbance which rises to such dignity.

CONCLUSION

WHEREFORE, for the foregoing reasons, petitioners pray the judgment below be reversed.

Respectfully submitted,

JACK GREENBERG
 CONSTANCE BAKER MOTLEY
 JAMES M. NABRIT, III
 MICHAEL MELTSNER
 10 Columbus Circle
 New York 19, New York

MATTHEW J. PERRY
 LINCOLN C. JENKINS, JR.
 1107½ Washington Street
 Columbia, South Carolina

DONALD JAMES SAMPSON
 125½ Falls Street
 Temple Building
 Greenville, South Carolina

Attorneys for Petitioners

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 86

JAMES EDWARDS, JR., ET AL., PETITIONERS,

versus

STATE OF SOUTH CAROLINA, RESPONDENT

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF SOUTH CAROLINA

BRIEF FOR RESPONDENT

DANIEL McLEOD,
Attorney General,
State of South Carolina,

J. C. COLEMAN, JR.,
EVERETT N. BRANDON,
Assistant Attorneys General,
State of South Carolina,
Wade Hampton Office Bldg,
Columbia, South Carolina,
Attorneys for Respondent.

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CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First Amendment and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

QUESTIONS PRESENTED

Whether the convictions of petitioners in the State court for the crime of breach of the peace are invalid because petitioners were denied due process of law or their rights to freedom of speech and peaceful assembly were violated.

STATEMENT

On March 2, 1961, a group of Negro students, petitioners herein, numbering approximately two hundred, met in a church in the City of Columbia with several older leaders for the purpose of organizing and carrying out a demonstration on the grounds of the South Carolina State House located within the City. They knew the General Assembly of the State was in session, and the avowed purpose of the demonstration was to protest to the General Assembly against all laws of the State relating to segregation of the races (R. 34, 109, 143).

The students, with their leaders, marched through the city streets in groups of twelve to fifteen, arriving at the State House grounds shortly before noon. The City Manager of Columbia, with City and State police officers, was already on the scene (R. 68). The students were told that they could walk in and about the grounds so long as they were peaceful (R. 35). At this time there were only a few persons present besides the students and police officers (R. 36). The students then proceeded to put into effect their planned course of action, marching in groups in and about the grounds, displaying placards, such as "I am proud to be a Negro", "Down with segregation", "You may jail our bodies but not our souls", and one placard which referred to "going to jail for freedom" (R. 110, 114, 150). Some of the groups proceeded in single file and some two abreast in and about the relatively narrow walkways of the grounds (R. 101). They were not hindered by police officers or anyone else until a radical change in the overall situation took place (R. 35, 36).

After a period of time estimated at approximately forty-five minutes, it became evident to police authorities that a large crowd of onlookers, estimated at 300-350 persons, attracted by the students' activities, had almost filled

the "horseshoe" area of the grounds, blocking vehicular traffic lanes, impeding the flow of pedestrian traffic on adjacent sidewalks, and adversely affecting vehicular and pedestrian traffic on the adjoining city streets (R. 9, 10, 11, 36). By that time, also, it had become evident to police authorities that there was imminent danger of further disruption of the public peace. Known "troublemakers" were recognized in the crowd of onlookers (R. 28, 29, 140). The total number of persons in and about the "horseshoe" area was increasing steadily, and the resulting situation relating to the free flow of traffic was growing worse (R. 70, 71).

It was at this point, and not until then, that police authorities instructed the students to desist and disperse (R. 13, 133). Such instructions were given to all the students. They refused to obey the order. Instead, in response to what the City Manager described as a "harangue" by their recognized leader, the students began to stamp their feet, clap their hands, and sing. Their marching continued (R. 133, 134). After approximately fifteen minutes of such activity, the students were arrested and charged with breach of the peace (R. 36, 134). It appears that the students were orderly until they were ordered to disperse, but that they were disorderly from that time until they were placed under arrest.

ARGUMENT

Petitioners' Convictions in the State Trial Court of the Common Law Crime of Breach of the Peace were Based on Sufficient Evidence to Establish Their Guilt, and, Therefore, No Denial of a Constitutional Right was Involved.

Evidence before the State trial court was sufficient to sustain convictions of the petitioners for the common law crime of breach of the peace. It follows that no denial of a constitutional right was committed. There is no such right to commit a crime. There was ample testimony from police

authorities of serious blockage of and hindrance to vehicular and pedestrian traffic throughout the area caused by persons attracted to the scene by petitioners. Among those persons were some recognized by experienced police authorities to be "troublemakers". There was considerable racial tension in the City at this time (R. 143).

This totality of circumstances convinced police authorities that some official action must be taken to restore public peace and tranquility, which had been disturbed already, and to prevent more serious trouble (R. 143, 144). The situation with which the police were confronted here was more serious than that which was involved in *Feiner v. New York*, 340 U. S. 315. In *Feiner*, there were only seventy-five to eighty persons involved, with relatively minor disruption of pedestrian traffic, it being stated that "some pedestrians were forced to walk in the street to avoid the crowd" (p. 317). By way of contrast, the present case involved an increasing crowd of onlookers estimated as great as 350 persons plus two hundred demonstrating students, making a total of perhaps five hundred fifty persons (R. 9, 11). Certainly blockage of pedestrian traffic was more extensive than in *Feiner*, plus the hindrance to and blockage of vehicular traffic (R. 11, 36), which was not present at all in that case.

It is true that one individual in *Feiner* threatened to assault the speaker (p. 317) and that there was testimony of some pushing, shoving, and milling around (p. 317), and testimony that the speaker had passed "the bounds of argument or persuasion and had undertaken incitement to riot" (p. 321). There is no such testimony in the present case; but those additional elements seem insufficient to distinguish this from *Feiner*. One individual, known to police, threatening assault on the speaker could have been controlled easily. Milling about, pushing, and shoving in a

close street crowd is normal. The words of the speaker undertaking "incitement to riot" seem less an actual or threatened breach of the public peace than the boisterous stamping of feet, shouting, and loud singing of the petitioners here when they were instructed to disperse (R. 133, 134).

There is no scintilla of evidence in the record of this case to indicate that the police officers involved acted for the purpose of suppressing the views expressed by the petitioners, or that they acted for any other reason than to preserve the public peace.

Although the petitioners put up very little testimony in the trial court, the testimony of two of them strongly indicates that they had little or no regard for their duty as citizens to assist in the maintenance of the public peace. As to the numbers of demonstrators used in the relatively restricted area available in and about the State House grounds, Reverend B. J. Glover, a defendant, testified (R. 168, 169):

Counsel: Do you think that right (to demonstrate) extends to a large group of two hundred people?

Rev. Glover: Yes, as individuals, and I believe that the group—at least I acted as an individual because I chose to follow them.

Counsel: You were acting in concert, were you not?

Rev. Glover: Yes.

Counsel: If it's all right for a group of two hundred, would it be all right for a group of four hundred?

Rev. Glover: It would be all right, if they acted under the same circumstances under which we acted.

Counsel: Would it be all right for a group of ten thousand?

Rev. Glover: I haven't ever assembled a group of ten thousand.

The only other defendant placed on the stand, James Jerome Kirton, indicated a total disregard for any reasonable control of mass demonstrations by testifying (R. 118):

Counsel: Don't you think, if the only purpose of your demonstration that day was to call attention to the various members of the Legislature and any other officials who may have been in or about the State House, that two hundred, or approximately two hundred, Negro students marching in and about the grounds with placards would have had time in an hour to sufficiently demonstrate to any of them, by person, their views or whatever views they were expressing by demonstration or call attention to themselves?

Kirton: Are you asking that we could easily have expressed our view to one person instead of

Counsel: No, I'm asking if you don't think an hour was long enough for that purpose.

Kirton: I don't.

Counsel: How long did you intend to demonstrate?

Kirton: Until conscience told me that the demonstration had lasted long enough.

It is not intended by the emphasis placed on the testimony of Reverend Glover and Mr. Kirton to argue that a limit of time or numbers may be placed upon the right of freedom of speech and assembly. Their testimony does indicate, however, that the petitioners took no thought of the disruption of the normal use of the public sidewalks and streets in the area, and that it was not unreasonable for police authorities to act to relieve the situation created by such an extended demonstration by so large a group of persons.

It is argued by the petitioners that their loud singing, shouting, and stamping of feet did not occur until **after** they were ordered to disperse (p. 5). Orders by the police to cease their demonstration did not justify such activity. If they thought that the police had overstepped their au-

thority, they could have refused to comply in an orderly and peaceful manner. An order by constituted authority, if unlawful, may be refused, but the fact that the order is unlawful does not justify a public disturbance by the one who receives the order. They were not resisting an unlawful arrest because no attempt at arrest had been made at this time. Their boisterous conduct at this time only added to the breach of public peace which had occurred already.

Petitioners place much emphasis upon the fact that they did not commit any act specifically prohibited by law and that there were no threats or acts of violence by any of the onlookers (p. 15). The problem faced by the police authorities in this case is succinctly stated in a concurring opinion in *New York v. Mink*, 340 U. S. 268, at p. 275:

"Adjustment of the inevitable conflict between free speech and other interests is a problem as persistent as it is perplexing. It is important to bear in mind that this Court can only hope to set limits and point the way. It falls to the lot of legislative bodies and administrative officials to find practical solutions within the framework of our decisions."

Speaking of such framework, the opinion states at p. 282:

"What is the interest deemed to require the regulation of speech? The State cannot, of course, forbid public proselyting or religious argument merely because public officials disapprove the speaker's views. It must act in patent good faith to maintain the public peace, to assure the availability of the streets for their primary purposes of passenger and vehicular traffic and for equally indispensable ends of modern community life."

The Court said in *Primer* (p. 320):

"This Court respects, as it must, the interest of the community in maintaining peace and order on its streets."

The following short quotations from the testimony serve to show the traffic situation as it appeared to police officers before they gave the order to disperse. City Manager McNayr testified (R. 10, 11):

Counsel: Can you estimate the number of persons who did gather in and around this horseshoe by the time that it became apparent to you that some further official action on your part would be necessary?

McNayr: I would estimate the number of persons, in addition to the student groups, to be in the neighborhood of 250 to 300 people.

Counsel: Now, with relation, Mr. McNayr, to the sidewalks around the horseshoe and the lane for vehicular traffic, how was the crowd distributed, with regard to those sidewalks and roadways?

McNayr: Well, the conditions varied from time to time, but at numerous times they were blocked almost completely with probably as many as thirty or forty persons, both on the sidewalks and in the street area.

Counsel: Would you say or state whether or not, in your opinion, this crowd did impede both vehicular and pedestrian traffic along the horseshoe?

McNayr: To the best of my knowledge, I can't recall a single vehicle trying to get in or out of the horseshoe. If one had attempted it, it would have impeded the entrance and exit to the horseshoe.

Counsel: Did you observe the pedestrian traffic on the walkway?

McNayr: Yes, I did.

Counsel: What was the condition there?

McNayr: The condition there was that it was extremely difficult for a pedestrian wanting to get through. Many of them took to the street area, even to get through the street area or the sidewalk.

City Manager McNayr testified further (R. 132):

Counsel: State whether or not you noticed or saw any change in the size of the number of persons who

might or might not have been within the horseshoe area?

McNayr: Yes. Soon after the Negro students arrived at the entrance to the horseshoe, crowds began to gather. This was in the neighborhood of twelve o'clock, noon, just prior to twelve o'clock, noon, and more and more people gathered within that area to the point where they were blocking both of the driveway entrances and the sidewalk area. They had to be told to move along, not to impede the sidewalk traffic, and it was necessary to station a policeman in the intersection of Gervais and Main Streets in order to keep traffic moving, because, again, a large group of persons attracted the passers-by in automobiles.

Counsel: Did you note the traffic, if any, which was on Gervais Street, immediately adjacent to the horseshoe?

McNayr: Yes, I did.

Counsel: Are you familiar with the normal flow of traffic on that street?

McNayr: Yes, I'm quite familiar with it.

Counsel: Was the traffic flow at that time normal?

McNayr: It was not normal--no, it was greatly slowed up. It had to be kept moving by a police officer. It was greatly slowed up, again, being attracted by the large group on the State House grounds. Normally, the lights control the traffic quite well.

Speaking of the activities of petitioners **after** they were told to disperse but **before** any attempt at arrest was made,

McNayr testified (R. 133, 134):

Counsel: Did you hear any singing, chanting or anything of that nature from the student group?

McNayr: Yes.

Counsel: Describe that as best you can.

McNayr: With the harangues, which I have just described, witnessed frankly by everyone present and in this area, the students began answering back with shouts. They became boisterous. They stomped their feet. They sang in loud voices to the point where, again,

in my judgment, a dangerous situation was really building up.

Petitioners complain of the vagueness of common law breach of the peace, and point out the fact that the petitioners were not charged with violation of Section 1-417, 1952 Code of Laws of South Carolina (p. 19).^{*} This statute involves only the use of driveways, alleys, or parking spaces on the State House grounds, and prohibits parking of vehicles by unauthorized personnel in certain parking areas on the grounds. There was no evidence that petitioners violated this Section. The defendant in *Feiner* was charged with disorderly conduct, which was nothing more than a statutory enactment of the common law crime of breach of the peace, *Niemotko v. Maryland*, 340 U. S. 268 (p. 287). It is pointed out in the concurring opinion of Justice Frankfurter in *Niemotko* (p. 289), that breach of peace statutes may be misused, but that the possibility of misuse alone is not enough to deny their practical existence.

^{*} §1-417 provides as follows:

"It shall be unlawful for any person:

- (1) Except State officers and employees and persons having lawful business in the buildings, to use any of the driveways, alleys or parking spaces upon any of the property of the State, bounded by Assembly, Gervais, Bull and Pendleton Streets in Columbia upon any regular weekday, Saturdays and holidays excepted, between the hours of 8:30 a. m., and 5:30 p. m., whenever the buildings are open for business; or
- (2) To park any vehicle except in spaces and manner marked and designated by the State Budget and Control Board, in cooperation with the Highway Department, or to block or impede traffic through the alleys and driveways."

In the present case, police authorities were stationed in and about the State House grounds before petitioners arrived (R. 18, 19), presumably for the maintenance of the public peace. There is no evidence to the contrary. The petitioners were not hindered in any way in expressing their views in the manner in which they chose (R. 8, 9). Police authorities remained upon the scene observing the overall situation. It was not until it became apparent to them after approximately forty-five minutes of such activity by the petitioners that a dangerous situation was developing that they took any action relative to petitioners. There was serious blockage and hindrance to traffic and a large crowd containing unpredictable troublesome elements had gathered. In addition, after they were told to disperse, petitioners became extremely disorderly.

Such circumstances were of such nature as to create the clear and present danger of the substantive evils a state has a right to prevent, as that rule is set out by this Court in *Cantwell v. Connecticut*, 310 U. S. 296 (p. 308).

CONCLUSION

Wherefore, for the foregoing reasons, respondent prays that the judgment below be affirmed.

Respectfully submitted,

DANIEL R. McLEOD,

Attorney General,

State of South Carolina,

J. C. COLEMAN, JR.,

EVERETT N. BRANDON,

Assistant Attorneys General,

State of South Carolina,

Wade Hampton Office Bldg.

Columbia, South Carolina,

Attorneys for Respondent.